

SB23-168 Gun Violence Victims' access to the Judicial System

Testimony 230308 Keith Emerson, Individual (and not a lawyer)

Please kill SB233-168 Here and Now.

The Justification Statement that Federal Law permits what you're doing here is, If you're a lawyer, an interesting legal theory. To the person in the street it's a lie.

Section 67-27-102 Legislative Declaration (d) of this bill states: "The Federal Protection of Lawful Commerce in Arms Act' preserves states' critical authority to enact laws prescribing and enforcing standards of responsible conduct and accountability for firearm industry members."

You have in my written submission a copy of the Federal law mentioned above, Public Law 109-92-Oct.26, 2005. That the states have authority to do what you're doing is not only not to be found but is specifically prohibited in the Federal law! Just take a few minutes and read Sections 2 and 3.

Only one suit has been settled as far as I'm aware and that was Sandy Hook families versus Remington, a company in bankruptcy. The insurance company wanted to be able to proceed with the dissolution and settled. Although the Supreme Court of the State of Connecticut indicated the case could proceed, before it actually began the case was settled. No guilt was ever legally determined.

This is about lawyers getting rich. For instance, the term "reasonable" is used a number of times in this bill but never defined. I suspect there's a distinct difference, even in this room and on this committee itself on what that term means in the situations covered by this bill. How many hundreds of millions of dollars will it take to decide what is reasonable.

I also found the (4) (b) on page 9 interesting where it's stated that, basically, if a firearm is used to cause harm there's a presumption that it's the fault of a firearm industry member. As I said, interesting theory.



March 2023

To: House Judiciary Committee
Re: AAUW support for SB23-168 & 170—Gun Safety

Dear Committee Members,

The American Association of University Women (AAUW) is one of the oldest women's organizations in the country, empowering women since 1881. The mission of AAUW is to advance equity for women and girls through research, education and advocacy

AAUW has declared that gun violence is a public health crisis, with women being especially vulnerable to domestic violence involving firearms. While there is no single solution to this problem, we believe each of these bills provides another small step toward a safer Colorado: SB168--Gun Violence Victims' Access To Judicial System, and SB170--Extreme Risk Protection Order Petitions

For these reasons, AAUW of Colorado stands in strong support of SB168 and SB170, and requests your YES vote in committee and throughout the process of becoming law.

Respectfully submitted,

A handwritten signature in blue ink that reads "Su Ryden".

Su Ryden
AAUW Colorado Public Policy Co-Director

16699 E. Kentucky Ave.
Aurora, CO 80017
303.898.5797
su@ryden.com

American Association of University Women--AAUW is a top-rated 501(c)3 charitable organization whose mission is to advance gender equity for women and girls through research, education, and advocacy.

Bill SB 23-168
and Bill SB 23-170

Given that there are already over 26,000 laws and Regulations restricting citizens from owning and using Fire Arms it isn't all that surprising to see even more laws and regulations being added. Especially when it supports the Agenda of the Majority Political Faction who manufactured the Laws and Regulations in the first place.

I like to consider the Big Picture and how we get to the point where anti-gun Laws are such an integral part of such an agenda. Joe Biden declared that nothing in the Constitution is absolute. He also stated that anyone who wants to take the government away from the people who control it are going to need more than an AR-15, they are going to need F-15s.

We hear all the time that political opponents to the Gun Regulators, and their belief in the Constitution and its Founding Principles are a Threat to Democracy. Democracy is basically designed around the principle that the Party with the most votes wins. So winning at all costs becomes the motivation, the Objective, and the Goal. The Means Justifies the End. Focus on the Larger populated cities, Manufacture enough ballots in those cities and you can win the most votes. You can win a Presidential Election with less than 17% of all U.S. Counties. That is Democracy, Even if it requires manufacturing the most extensive election fraud organization in history to protect the means.

Protecting and maintaining the majority vote may entail manufacturing dossiers on your political opponents, Usurping and weaponizing Law Enforcement and the Judicial system, or manufacturing accusations and spreading them through a manufactured Media Propaganda Enterprise.

Finally declare Law Abiding citizens a Threat to Democracy. Charge a couple hundred of them with Insurrection and throw them into Solitary Confinement so the rest of the Dissidents fall in line. Manufacture a spy network to keep tabs on people who speak out against them. Flood the Media Propaganda Enterprise portraying citizens as radical, violent extremists, especially the citizens with Fire Arms that might turn against the Democracy one day.

The Law Makers, Law Enforcement, and the Law interpreters are the three branches of Government that are trusted to establish and create a society that is safe and protected from crime and injustice yet here we are. Criminals are being let out of prison, there are little to no consequences for acts of violence, and drugs are killing far more citizens than legal or illegal guns. It appears that the social narrative that was manufactured through policy to intimidate and scare citizens believing the government will protect them is causing more citizens to go out and buy more guns and ammunition. When Law enforcement and the military stands between government and the citizens you will know Tyranny by the direction they are facing.

Bottom line, the citizens have lost Trust. In the Federalist Papers there is some discussion and comments about what Government can do to prevent citizens from taking up arms against it. The proposed response was Govern Responsible. When a perpetrator drives a vehicle through a parade and kills participants and spectators, who is held Liable? When a knife wielding perpetrator runs down a city sidewalk stabbing people along the way, who are held Liable? When a Police officer shoots a perpetrator, who is held liable? When a 19 year old soldier shoots a non-combatant in a War Zone, who is held liable?

When the majority in a Democracy, supported by the Justice system manufacture Pro-Crime, Pro-Criminal and Anti-Law enforcement policies that prevent citizens from protecting themselves, their families, their community, their way of life and their country who is Laible?

Yes the Majority Party in this People's house won their elections and holds the Most Votes, Well played. You can now pass any and every Bill you want to support your collective Party Agenda and protect yourselves from the citizens and their 2nd Amendment Right.

Good afternoon Chair Weismann and members of the committee,

As a county commissioner, as a mother, as a former educator, I have strongly supported gun violence prevention policy and legislation at the local, state, and federal level, and am writing to express my and Boulder County's support of Senate Bill 170.

In 2022, my colleagues and I passed five local ordinances to prevent violence and death in our communities through the authority granted in Senate Bill 21-256. Today I am here before you to express Boulder County's support of the updated and expanded authorities granted in Senate Bill 170 for enacting Extreme Risk Protection Orders.

As you are well aware and have heard today, the United States suffers from an epidemic of gun violence, more than 1 million lives lost since 1990. The US tops all other high wealth countries for gun-related homicides, with 23 times the number of gun-related homicides as Australia. The United States also suffers from more gun-related suicides than any other country in the world- accounting for 40 percent of the world's gun-related suicides, though the US represents just four percent of the world's population. And the US is the only country in the world where the number of civilian firearms outnumbers the population. Quite simply, access to firearms in the United States, especially among people at risk of harming themselves or others, increases violence and death in our state.

People, our neighbors and our friends, across our communities in Boulder County have lost their lives to gun violence. Two years ago, ten people were murdered at a King Soopers supermarket while working and buying food for themselves and their families.

Emergency Risk Protection Orders are a valuable tool for protecting the lives of our neighbors, our clients, our constituents from suicide, homicide, and mass shootings and we respectfully request your aye vote today.

Thank you to the sponsors for your leadership on this critical piece of legislation.

Sincerely,

Commissioner Marta Loachamin, Boulder County Board of Commissioners



Testimony of Liddy Ballard, State Policy Manager
Support for Senate Bill 168
Before the Colorado House Judiciary Committee

March 22, 2023

Dear Chair Weissman, Vice Chair Bacon, and distinguished members of the House Judiciary Committee,

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America's gun violence epidemic. Brady today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence. **In furtherance of our goal to reduce firearm violence across Colorado, the Brady Campaign to Prevent Gun Violence is proud to support the passage of Senate Bill 168.**

Support: SB23-168; Victim's Access to Judicial Proceedings

A top priority of the gun industry, the Protection of Lawful Commerce in Arms Act (PLCAA) was signed into law by then-President George W. Bush in 2005.¹ PLCAA provides gun manufacturers, distributors, dealers, and importers of firearms or ammunition with special protections from civil liability that no other industry in the US is currently afforded. Although PLCAA does not provide complete immunity from all civil lawsuits, some courts have interpreted the law to effectively bar victims and survivors of gun violence from holding firearms businesses liable for injuries caused by negligence, defective products, or unreasonably dangerous conduct that would otherwise be actionable under civil justice principles.

Unfortunately, on top of the barriers created by PLCAA, Colorado also has a very dangerous state immunity law that not only indiscriminately insulates the industry from liability, but also punishes victims and survivors who do try to pursue a claim, through a fee shifting provision.

¹Brady Campaign and Brady Center, *What is PLCAA?*. Brady. <https://www.bradyunited.org/fact-sheets/what-is-plcaa>.

How SB 168 Will Work

PLCAA enumerates a few narrow exceptions that allow victims to bring lawsuits for very limited claims. Civil action is permitted when a manufacturer or seller of a firearm, ammunition, or component parts, “knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought,” also known as the “predicate exception.”² In practice, this limits possible causes of actions that can be brought within Colorado to *only* those where the gun industry knowingly violated a Colorado or federal law related to the sale or marketing of a firearm. The predicate exception listed in PLCAA is an invitation to state legislatures to create state law protecting gun violence survivors’ right to have their day in court and SB 168 will serve as that Colorado law. SB 168 will also repeal the punitive state immunity law. With the passage of this bill, gun industry members will be treated like all other businesses in the state of Colorado and will no longer be insulated from liability despite negligent, dangerous, or even unlawful behavior because of the special protections afforded under PLCAA and the state immunity bill.

Why Gun Industry Immunity is so Dangerous

Industry immunity denies justice to victims and survivors.

Victims should have recourse for the gun industry’s negligence and dangerous practices, but PLCAA and Colorado state law currently protect gun dealers and manufacturers from being held responsible. Gun dealers and manufacturers should be held responsible for negligent and irresponsible sales practices that are the proximate cause of an individual's injuries or death, and for selling to someone who is likely to harm themselves or others. Manufacturers who design firearms without life-saving safety features, such as chamber-loaded indicators and magazine disconnect safeties, or sell to someone who is clearly likely to harm themselves or others should be held liable for their design failures and malpractice. Instead, these bad actors are insulated from penalty.³

Industry immunity perpetuates the flow of crime guns into communities of color.

The implications of this lack of accountability cannot be overstated: gun violence in America disproportionately impacts communities of color. While a small minority of gun dealers are the sources of crime guns recovered in communities of color, these gun dealers typically sit outside those communities in less diverse and more affluent suburbs⁴. Residents of these communities suffer from the chronic stress of daily interpersonal gun violence and the negative impacts on their community’s economic prosperity, without recourse or compensation while irresponsible gun dealers face no consequences. Approximately 89 percent of America’s gun deaths occur in urban areas with large minority populations, and Black Americans are 11 times more likely than their White peers to be the victim of firearm homicide.⁵ This problem is exacerbated for Black males, who lose four years in life

²Protection of Lawful Arms in Commerce Act, S. 297, 109th Cong. (2005).

<https://www.congress.gov/109/plaws/publ92/PLAW-109publ92.pdf>

³ (January 2023) *Polymer 80 issues statement on ATF’s recent letter. The Outdoor Wire.*

<https://www.theoutdoorwire.com/releases/5e0c59b4-be64-4be3-b631-a3249012986d>

⁴ *Crime guns in impacted communities.* Brady. (n.d.). <https://www.bradyunited.org/reports/crime-guns-in-impacted-communities>

⁵ Centers for Disease Control and Prevention (CDC), *WISQARS injury data*, <https://www.cdc.gov/injury/wisqars/index.html>

expectancy on the basis of gun violence alone;⁶ in Colorado specifically, Black men are 10.1 percent more likely to be killed by gun violence than White men.⁷

Industry immunity disincentivizes responsible business practices.

The mere threat of civil liability motivates companies to adopt safe business practices that prevent future injuries and death.⁸ For example, car manufacturers made numerous safety improvements that cut automobile-related deaths by 50 percent since the 1960s, primarily because of technological advancements spurred by fear of liability.⁹ PLCAA and the state immunity law effectively remove this motivation for the gun industry, disincentivizing gun dealers from adopting safe sales practices and gun manufacturers from incorporating affordable life-saving safety devices into their products and monitoring their distribution practices.¹⁰ While the gun industry claims that mental health¹¹ and violent video games¹² are to blame for gun violence, it's actually common industry practices that create the conditions that enable most gun violence to occur.¹³ The limitations on the ability to hold the industry accountable prevent public awareness and deter regulatory changes, as well as disincentivize independent action by the industry to avoid liability, all of which would reduce gun violence and save lives.

SB 168 must be enacted because no industry should be above the law, especially not one that makes and sells lethal weapons. SB 163 will ensure bad actors in the gun industry are held accountable and victims of gun violence are able to get justice through the law.

Conclusion

Coloradans are reeling from numerous acts of gun violence in the last year, and these bills provide an opportunity to address the epidemic residents are facing. ***For the reasons described above, Brady urges the committee to support the passage of Senate Bills 168 and 169.***

Sincerely,
Liddy Ballard

⁶ Howard, J. (2018, April 24). *The disparities in how black and white men die in gun violence, state by State*. CNN.

<https://www.cnn.com/2018/04/23/health/gun-deaths-in-men-by-state-study/index.html>

⁷ Centers for Disease Control and Prevention (CDC), *WISQARS Injury Data*, <https://www.cdc.gov/injury/wisqars/index.html>

⁸ Vernick, J., Mair, J., et al., (August 2003). *Role of litigation in prevention product-related injuries*. Society for Epidemiologic Research. 25(1):90-98. <https://academic.oup.com/epirev/article/25/1/90/718671>

⁹ LaFrance, A. (January 2016). *Why haven't gunmakers improved safety technology the way automakers did?* The Atlantic.

<https://www.theatlantic.com/technology/archive/2016/01/guns-cars/424878/>

¹⁰ Brady. (September 2019). *Tobacco kills people. opioids kill people. but guns don't?* Medium.

<https://bradyunited.medium.com/tobacco-kills-people-opioids-kill-people-but-guns-dont-7852c288d496>

¹¹ Zeballos-Roig, J. (n.d.). *The NRA issued a statement supporting Trump's call to focus on mental illness to reduce gun violence after the shootings in El Paso and Dayton*. Business Insider.

<https://www.businessinsider.com/nra-statement-backing-trump-el-paso-dayton-shootings-mental-illness-2019-8>

¹² Hudson, L. (December 2012). *The NRA solution to gun violence: More guns, fewer videogames*. Wired.

<https://www.wired.com/2012/12/nra-video-games/>

¹³ Gluck, A., Nba-Noori, A., et al., (January 2021). *Gun violence in court*. The Journal of Law, Medicine, & Ethics. 48(4).

<https://journals.sagepub.com/doi/abs/10.1177/1073110520979406>

March 22, 2023

TO: Colorado House Judiciary Committee

RE: Opposition to SB23-168

I am opposed to SB23-168 which is an attempt to shut down businesses that manufacture or sell firearms through abusive litigation. This ill-advised bill alters the common-law rules of tort just for the firearms business, and opens up lawsuits specifically designed to bankrupt firearms businesses who are otherwise strictly complying with all federal and state firearms laws and regulations. This bill also raises serious interstate commerce issues, and runs counter to current federal laws on lawsuits against firearms manufacturers and dealers.

Under the Second Amendment, I have the individual right to keep and bear arms. The recent US Supreme Court Bruen case provides the scope and context for our Second Amendment rights. Knowing that the Second Amendment prevents the Colorado General Assembly from banning firearms sales and ownership, SB23-168 takes another tack to try to accomplish the same end. SB23-168 is a cynical attempt to destroy the ability of Colorado residents to buy and possess firearms by bankrupting those who manufacture and sell firearms.

Respectfully submitted,

Terri Carver

Colorado Springs, CO

Testimony as Submitted in support of SB23-170: Extreme Risk Protection Order Petitions by Hunter Nelson, Policy Analyst at the Colorado Children’s Campaign

House Judiciary Committee

Mar. 22, 2023, 1:30pm

Old State Library

Dear Mr. Chair and Members of the House Judiciary Committee,

My name is Hunter Nelson and I am a Policy Analyst at the Colorado Children’s Campaign. Together with our partner organizations and communities across the state, we advocate for the development and implementation of data-driven public policy that improves child and family well-being. We fight for a world in which, without exception, public policies and investments remove barriers for most impacted children and families and improve well-being for every child and every family. The Children’s Campaign is in strong support of SB23-170: Extreme Risk Protection Order Petitions.

Homicide is a leading cause of death among pregnant and postpartum women in the United States. Pregnant and postpartum women are more likely to die from homicide than from the three leading obstetric causes of death. Most of these incidents involve an intimate partner and a firearm: One study found that 68% of pregnancy-related homicides between 2009-19 involved guns.¹ The United States has a higher prevalence of intimate partner violence than other countries, and much of this violence is fatal.

It doesn’t have to be this way. According to research from RAND’s Gun Policy in America initiative, state laws establishing firearm prohibitions for people subject to domestic violence restraining orders reduce total and firearm-related intimate partner homicides.² Firearm relinquishment laws are also associated with a substantial reduction in homicides of pregnant and postpartum women and people, according to research published in Health Affairs.³ This promising evidence should not be ignored.

Colorado has already implemented the usage of extreme risk protection orders (ERPOs) through the passage of HB19-1177, commonly known as the “Red Flag” law. But we need to take steps to ensure that the law is best serving and protecting people who are at risk of gun violence.

SB23-170 would expand who can file ERPOs to include licensed medical care providers, licensed mental health care providers, licensed educators and district attorneys. Expanding who can file petitions has the potential to save lives, especially for people who may fear retaliation from their abusers for personally filing ERPOs against them. Medical care providers, educators and district attorneys interface with community members regularly. This puts them in an ideal position to file ERPOs on behalf of their clients and patients in a way that preserves anonymity. As an organization that values maternal health, the Children’s Campaign firmly supports ERPOs and the expansion of who can file these petitions.

¹ [Homicide leading cause of death for pregnant women in U.S. | News | Harvard T.H. Chan School of Public Health](#)

² [Effects of Prohibitions Associated with Domestic Violence on Violent Crime | RAND](#)

³ [Firearm Relinquishment Laws Associated With Substantial Reduction In Homicide Of Pregnant And Postpartum Women | Health Affairs](#)

We also support SB23-170's requirement that the Office of Gun Violence Prevention expend funds annually on a public campaign to educate Coloradans on the availability of and how to file ERPOs. Our hope is that this would lead to more equitable statewide implementation of this important policy, supporting the health and lives of pregnant and postpartum women and people across the state. **Please vote yes on SB23-170.**

Thank you,

Hunter Nelson

Hunter Nelson

Policy Analyst

Hunter@coloradokids.org

Reference SB-23-168, SB-23-169 and SB-23-170

Murder, Assault, and many other violent crimes are already illegal. Taking guns from the majority of the law-abiding population is not going to stop someone that is intent on doing harm to others.

Passing Bills that show a total lack of common sense is not going to stop criminals from being criminals.

There is a small minority of the population that commit these crimes and that is where the focus needs to be. When you have welfare mothers making babies to increase their welfare check, it creates a problem for society. These babies grow up with no real family structure and no father in the household. The only sense of belonging for most of these kids are gangs, weapons, drugs, and crime. Before disarming good citizens, you need to work on the social problems so rampant in the cities. The violent video games are the only life these kids know.

Reference SB-23-168: As a police officer I have investigated many motor vehicle crashes involving alcohol or drugs, some involving multiple fatalities. With the warped thinking in this bill are you going to carry this idea forward and make the manufacture of the automobile, the alcohol or drugs, or the farmer that grew the grain that made the alcohol responsible. Responsibility for the unlawful or careless use of any product rests with the user of the product, whatever it may be. Unless there is a known defect in the product there should be no responsibility for the illegal use of the product. This applies to firearms, just like everything else. In the many years as a police officer, I never did see a firearm hurt anyone, but I have seen the harm that people did when they misused a firearm, just like the misuse of an automobile, hammer, knife or other object.

Reference SB-23-169: Recently a Denver High School principal stated on the evening news that they got rid of the school resource officer in 2020 and they were not coming back. When questioned about the number of guns in the school he said that the students had to have their guns for protection. When you have people like this running the schools, we all have problems but disarming the responsible folks will not cure them.

Our young folks, some as young as 16 or 17 have gone to war and gave their lives to keep America free, now you want to take away those rights by raising the age to 21 to possess a firearm. This does nothing for those that are using a firearm to commit a crime under the current law, no matter their age. When you have a high school principal that thinks the kids, most younger than 18, need a firearm for protection in school, it's an indication that we need to deal with the real cause of the problem, not make more restrictions on the law abiding majority.

Reference SB-23-170: Another misguided bill. Unless someone has been determined to be a danger to themselves or others, after a hearing by an competent court there should be no raids to seize the property of another. This bill should be dead on arrival. There should be liability placed on parents, guardians or caretakers of young folks or adults that exhibit violent behavior and fail to secure any weapons in the household. Any threat of harm to others should be reported to the police and it should be incumbent on the police or social services to follow up on such threats with the proper actions through the courts.

We need to enforce the laws against violent crime that we have and prosecute without consideration to skin color. If the proportion of people in prison does not match the population it is an indication of where the problem is in society. It is not a problem of bias. We need strong bail laws and a strong court system.

I realize this country has produced several generations of children that grow older without many of them really learning any family values or responsibility and each generation reproduces more liberal individuals that lack responsibility or common sense. Many of these individuals concentrate in places like Boulder and the larger cities. Put the resources where the crime is and do not take the rights from law abiding citizens that our 18 – 21-year-old children have died to defend.

This is America and we are not a socialist country yet, although these misguided Bills are trying to move that forward. It's time for all the legislators in both the House and Senate to show some **common sense** by making strong laws that really have an effect on crime, where the crime is occurring.

Mike Lederhause

Public Law 109–92
109th Congress

An Act

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

Oct. 26, 2005
[S. 397]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protection of Lawful Commerce in Arms Act”.

Protection of
Lawful
Commerce in
Arms Act.
15 USC 7901
note.

SEC. 2. FINDINGS; PURPOSES.

15 USC 7901.

(a) **FINDINGS.**—Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation’s laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing

in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

15 USC 7902.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

(b) **DISMISSAL OF PENDING ACTIONS.**—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

15 USC 7903.

In this Act:

(1) **ENGAGED IN THE BUSINESS.**—The term “engaged in the business” has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) **MANUFACTURER.**—The term “manufacturer” means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) **PERSON.**—The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) **QUALIFIED PRODUCT.**—The term “qualified product” means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) **QUALIFIED CIVIL LIABILITY ACTION.**—

(A) **IN GENERAL.**—The term “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required

to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26, United States Code.

(B) **NEGLIGENT ENTRUSTMENT.**—As used in subparagraph (A)(ii), the term “negligent entrustment” means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) **RULE OF CONSTRUCTION.**—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(D) **MINOR CHILD EXCEPTION.**—Nothing in this Act shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

(6) **SELLER.**—The term “seller” means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and

who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) STATE.—The term “State” includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term “trade association” means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE.—The term “unlawful misuse” means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

SEC. 5. CHILD SAFETY LOCKS.

(a) SHORT TITLE.—This section may be cited as the “Child Safety Lock Act of 2005”.

(b) PURPOSES.—The purposes of this section are—

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(c) FIREARMS SAFETY.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

“(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

“(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

“(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United

Child Safety
Lock Act of 2005.
18 USC 921 note.

18 USC 922 note.

States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

“(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

“(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

“(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

“(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

“(3) LIABILITY FOR USE.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

“(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

“(C) DEFINED TERM.—As used in this paragraph, the term ‘qualified civil liability action’—

“(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

“(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

“(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

“(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.”.

(2) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(A) in subsection (a)(1), by striking “or (f)” and inserting “(f), or (p)”; and

(B) by adding at the end the following:

“(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

“(1) IN GENERAL.—

“(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

“(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

“(ii) subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

“(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

“(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.”.

(3) LIABILITY; EVIDENCE.—

18 USC 922 note.

(A) LIABILITY.—Nothing in this section shall be construed to—

(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

(ii) establish any standard of care.

(B) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this subsection.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 180 days after the date of enactment of this Act.

18 USC 922 note.

SEC. 6. ARMOR PIERCING AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) and (8) and inserting the following:

“(7) for any person to manufacture or import armor piercing ammunition, unless—

“(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

“(B) the manufacture of such ammunition is for the purpose of exportation; or

“(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

“(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

“(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

“(B) is for the purpose of exportation; or

“(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;”.

(b) PENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

“(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

“(A) be sentenced to a term of imprisonment of not less than 15 years; and

“(B) if death results from the use of such ammunition—

“(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

“(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.”.

(c) STUDY AND REPORT.—

(1) STUDY.—The Attorney General shall conduct a study to determine whether a uniform standard for the testing of projectiles against Body Armor is feasible.

(2) ISSUES TO BE STUDIED.—The study conducted under paragraph (1) shall include—

(A) variations in performance that are related to the length of the barrel of the handgun or center-fire rifle from which the projectile is fired; and

(B) the amount of powder used to propel the projectile.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the results of the study conducted under this subsection to—

(A) the chairman and ranking member of the Committee on the Judiciary of the Senate; and

(B) the chairman and ranking member of the Committee on the Judiciary of the House of Representatives.

Approved October 26, 2005.

LEGISLATIVE HISTORY—S. 397:

CONGRESSIONAL RECORD, Vol. 151 (2005):

July 27-29, considered and passed Senate.

Oct. 20, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 41 (2005):

Oct. 26, Presidential statement.



Gun Control Research- Dr. Gary Kleck- Gun most effective way to resist robbery and assault- up to 2.5 million defensive gun uses per year by U.S. adults

Dr. Kleck, a professor of criminology at Florida State University is a registered Democrat, a member of the ACLU, does not own guns, and takes no money from anyone on either side in the debate. In 1988, Kleck published an article in the journal, *Social Relations*. This article, the first major research effort that measured defensive gun use, was based on state and national studies.

Dr. Kleck estimated that about 1 million adults per year use a gun for self-defense in the U.S. Kleck's research included studies done for the anti-gun National Alliance Against Violence, and the National Crime Victimization Surveys. Kleck concluded that gun use was the most effective and safest way of resisting a robbery or assault, safer than not resisting, running away, or using another method of resistance.

In 1991, Dr. Kleck published *Point Blank: guns and violence in America*. The book won an award in 1993 from the American Society of Criminology for an "outstanding contribution" to the field.

Not satisfied with the sources for his previous work, Dr. Kleck and his colleague Marc Gertz created a new survey with a sample size of about 5,000 individuals to better measure defensive gun use. With the new survey, Kleck and Gertz estimated between 2.2 to 2.5 million defensive gun uses per year in the U.S. Women were the defenders in about 46% of the cases reported. Less than 25% of the reporting defensive users indicated that they fired a shot during the incident under consideration. There is a less than 1% chance that a defender's gun will be taken from him or her by an assailant, according to Dr. Kleck.

Dr. Marvin Wolfgang was asked to critique the Kleck/Gertz Study. Dr. Wolfgang's review included the following: "I am as strong a gun-control advocate as can be found among... criminologists... they (Kleck and Gertz) have provided an almost clear-cut case of methodologically sound research in support of something I have theoretically opposed for years... the use of a gun in defense against a criminal perpetrator... I do not like their conclusions that having a gun can be useful, but I cannot fault their methodology."

The absolute lowest estimates of about 100,000 defensive gun uses per year in this country come from the Department of Justice, using U.S. Census information. There is no question in the survey that asks about defensive firearms' use. This estimate is probably a serious undercount.

The Clinton Justice Department funded what was supposed to be a counter study debunking the Kleck/Gertz research. In 1996, anti-gun researchers Ludwig and Cook came up with about 3 million defensive gun uses per year. They then decided that it is impossible to measure the true number of persons who use guns in America for self-defense.

The research done by Kleck and Gertz indicates that defensive use of firearms by private citizens is a significant factor in stopping criminal violence. The research also lends itself to the conclusion that in the vast majority of cases where a gun is used to resist robbery or assault, no shots are fired.

Sources:

- ❑ Blackman, Paul H., Ph.D., "Armed Citizens and Crime Control," <http://www.nraila.org/issues/articles/read.aspx?id=125>.
- ❑ Kopel, David, Independence Institute, panel discussion on guns and self-defense, Warwick Hotel, Denver, Colorado, July, 2009. <http://vids.myspace.com/index.cfm?fuseaction=vids.individual&VideoID=60107462>
- ❑ "How Often Are Firearms Used in Self-Defense?" http://www.guncite.com/gun_control_gcdguse.html.
- ❑ Stevens, Richard W., "Statistics and 'Gun Control,'" Jews for the Preservation of Firearms Ownership, Inc, <http://www.jpfo.org/filegen-a-m/data-docs.htm>.

The Red Flag legislation is flawed on so many levels not the least of which is its invasive nature into our personal freedoms. Not only does it allow for serious abuse and possibilities for weaponizing this well intended safety measure but the lack of due process of law or innocent until proven guilty cornerstones of our justice system are at risk of being disregarded. It will take immense honest people to administer and stay in the parameters of this proposed law. To trust in that rare possibility is fantasy at best and irresponsible. Please do not in your haste to address safety issues do this action completely ignoring the basic issue. Rising crime due to lax enforcement policy. There is no need for more policy and laws when stricter enforcement of current laws would address the problem of criminal behavior. Support and employ more law enforcement and a constant presence visible everywhere in our urban places would result in the safety we all desire. This is the more efficient use of our tax dollars then more laws and regulations that aren't enforced. Get to the heart of why you think we need this superfluous law. Being tough on crime and criminals is the answer.

Katie Houde, native/ resident/law abiding taxpayer



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Protecting Law-abiding Firearms Businesses from Abusive Lawsuits

by David Kopel
Research Director

IP-1-2023 • March 2023

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EXECUTIVE SUMMARY

In the late 1990s, a gun prohibition organization adopted a strategy previously used by Jim Crow government officials against the free press: filing abusive lawsuits designed to cripple the businesses through the sheer cost of litigation against meritless claims.

In response, most states, Colorado included, enacted legislation against such misuse of the judicial process. Eventually, the U.S. Congress enacted similar national legislation.

In 2014, the same organization that had cooked up the original suits convinced Sandy and Lonnie Philips to file a meritless lawsuit in Colorado. Although it was clear beyond doubt that the suit had no chance of success, the Philips say that the organization chose not to inform that Philips that if their case inevitably lost, they would be responsible for paying the attorney's fees of the defendants.

When the U.S. District Court did dismiss the plainly unlawful lawsuit and awarded attorney's fees, the gun prohibition organization, whose reported annual revenues are over 40 million dollars, refused to help the Philips.

Similarly the law firm that filed the bogus suit, Arnold & Porter, has refused to reimburse the Philips. The annual revenue of Arnold & Porter is over a billion dollars.

Part I of this Issue Paper describes the Jim Crow system of abusive tort litigation against the First Amendment.

Part II details how gun prohibition advocates copied and amplified the Jim Crow tactics, for use against the Second Amendment. In response, most states, including Colorado, enacted legislation and so did Congress.

Part III describes a new type of bill that has been introduced in Colorado and enacted in several states. The bill creates a new statute to authorize abusive suits. The bill provides no standards for what is lawful and unlawful. The bill is set up to destroy firearms manufacturers through the cost of litigation. The bill:

- Authorizes lawsuits against companies that supposedly do not have "reasonable controls," but does not specify any "reasonable control."
- Abolishes proximate cause.
- Authorizes suits against businesses in other states that comply with all the laws of their own state.
- Allows the Colorado Attorney General to designate a gun prohibition group to sue firearms businesses relentlessly on behalf of the Attorney General.
- Ensures that gun prohibition lawyers who win on a playing field heavily tilted in their favor, "shall" be paid by firearms businesses.
- Prevents victims of abusive lawsuits who prevail in court from recovering attorney's fees.
- Prohibits many programs that teach firearms safety to children.

In the late 1990s, a gun prohibition organization adopted a strategy previously used by Jim Crow government officials against the free press: filing abusive lawsuits designed to cripple the businesses through the sheer cost of litigation against meritless claims.

A federal district court in New Jersey has issued a preliminary injunction against a similar law.

Part IV explains why manufacturers of the two physical items specifically protected at the beginning of the Bill of Rights—printing presses and arms—should not be sued for unlawful misuse of their products by third parties.

Finally, Part V described how the gun ban group that had cooked up the junk lawsuits, and the Arnold & Porter law firm, manipulated the Philips family.

I. JIM CROW VERSUS THE FIRST AMENDMENT: ABUSIVE TORT LAWSUITS

During Jim Crow days in the South, photographs of black people rarely appeared in the mainstream press, except in crime stories. The concerns and aspirations of black people got little attention.¹ The gap was filled by the black press, which almost always operated on a shoestring. When the black press exposed or criticized abuses by the white power structure, including illegal violence by law enforcement officers, retribution sometimes came as a libel suit.²

Even when newspaper articles were impeccably accurate, there was a significant risk of enormous verdicts from all-white juries. Jurors were selected from voter rolls, and blacks were often prevented from registering.

Verdicts aside, the simple costs of legal defense threatened the existence of the newspapers. For example, notwithstanding Thurgood Marshall’s legal defense, South Carolina’s *Lighthouse and Informer* was driven out of business in 1954 by a criminal libel prosecution.³ On advice of attorneys, including Thurgood Marshall, the *Sumter Daily Item* paid \$10,000 to settle a non-meritorious libel suit.⁴

A 1954 suit against the *Lexington Advertiser* was eventually decided in the defendant’s “favor, but not before a costly legal battle.”⁵ Another unsuccessful libel case against the *Lexington Advertiser* was brought in 1963. The cumulative effect of the two libel suits, plus the loss of advertising due to violent threats against advertisers, put the editor \$100,000 in debt.⁶

When the *Oklahoma Black Dispatch* asked the national NAACP for help in a libel suit involving a shooting by police, NAACP attorney Robert Carter convinced the paper to settle, due to concerns about “the toll these libel suits were taking on the bank account of the organization.”⁷

As civil rights became a growing national issue, “outsider” national media coverage in the South increased. So did libel suits. *New York Times Co. v. Sullivan* arose from a full-page advertisement in the *Times*, “Heed Their Rising Voices.”⁸ The ad included false information about L.B. Sullivan, who was an elected city commissioner in Montgomery, and in that capacity supervisor of the city police. The ad accused Sullivan

...South Carolina’s *Lighthouse and Informer* was driven out of business in 1954 by a criminal libel prosecution.

of misconduct at a certain event, when in fact Sullivan had not even been present. He sued the *New York Times*, and also four black civil rights leaders, whom the advertiser had listed as endorsers without their knowledge or consent.⁹

At least regarding the advertisement, Sullivan had a legitimate complaint about inaccuracy. Many other Jim Crow libel lawsuits were meritless.

For example, in 1960, the *Times* had sent Harrison Salisbury—winner of the Pulitzer Prize—to Birmingham. His facts were accurate. His analysis compared Birmingham to Johannesburg, and local police behavior to that of Nazi police.¹⁰ In retaliation, Salisbury and the *Times* were sued in multiple cases by local officials, with millions sought in damages.¹¹

For the next year, the *Times* kept its reporters out of Alabama, lest a reporter be served with process for the *Sullivan* suit, thereby eliminating the *Times*' argument that its small circulation in Alabama was insufficient for state court jurisdiction.¹² The *Times* killed two stories, one about Mississippi and another about voting in Birmingham; although the stories were accurate, the lawsuit risk was too great.¹³

For coverage of the police-sanctioned mob assault against Freedom Riders on May 14, 1961, and the follow-up, the *Times* relied on CBS Television reports.¹⁴ CBS was sued for that coverage, and for a November 1961 story about how voting registrars in Montgomery County, Alabama, impeded blacks from registering. Although none of the reporting had factual errors, CBS retracted both stories, apologized on air, fired the reporter (the award-winning Howard K. Smith), and settled the Montgomery case for an undisclosed amount.¹⁵

The *Montgomery Advertiser* hoped that “the recent checkmating of the *Times* in Alabama will impose a restraint upon other publications.”¹⁶

Although the *Times* was far wealthier than any Southern black newspaper, “few people realized how financially vulnerable the *Times* was in 1960.”¹⁷ In the early 1960s, the paper “was barely making a profit and likely would not have able to survive” the multi-million-dollar damages.¹⁸ According to the *Times*' Managing Editor, the paper's bank accounts “were coming out ‘cleaned.’ This is an expensive business.”¹⁹

“No strategy for squelching the media's portrayal of conditions in the South . . . carried more potential for success than the creative use of the law of libel,” explained law professor Rodney Smolla, a libel law expert.²⁰ As the *Washington Post*'s executive editor observed, the southern libel suits “enormously increase the liability of the press for its defense against such suits in communities where jurors may be hostile to them....”²¹ “The ability to report would be destroyed “if the costs of defending against bare allegations of error threaten the survival of the newspaper.”²²

The *Sullivan* case had been brought not just against the *Times* for publishing an inaccurate advertisement. Four prominent black Alabama ministers were also sued: Ralph Abernathy, Fred Shuttlesworth,²³ Joseph Lowery, and Solomon Seay.²⁴ As noted above, they explained that the advertiser had wrongly listed their names as endorsers even though they had neither seen nor approved the ad. The jury brought in a verdict

The *Times* killed two stories, one about Mississippi and another about voting in Birmingham; although the stories were accurate, the lawsuit risk was too great.

of half a million dollars against the ministers and the *Times*. “[T]he jury apparently found the four men guilty because of their civil rights work and not because they had defamed L.B. Sullivan.”²⁵

As Supreme Court Justice Hugo Black explained when the *Sullivan* case was before the Supreme Court, more “huge verdicts” were

lurking just around the corner for the *Times* or any other newspaper or broadcaster which might dare to criticize public officials. In fact, briefs before us show that in Alabama there are now pending eleven libel suits by local and state officials against the *Times* seeking \$5,600,000, and five such suits against the Columbia Broadcasting System seeking \$1,700,000. Moreover, this technique for harassing and punishing a free press—now that it has been shown to be possible—is by no means limited to cases with racial overtones; it can be used in other fields where public feelings may make local as well as out-of-state newspapers easy prey for libel verdict seekers.²⁶

According to the Southern Publishers Association, as of 1964 there were 17 pending libel suits against the media in southern courts, seeking total damages of \$238,000,000.²⁷ For example, the *Saturday Evening Post* was being sued for coverage of the riots against integration of the University of Mississippi.²⁸

The Supreme Court ruled in favor of the newspaper in *New York Times v. Sullivan*. To protect the freedom of speech and of the press, the Court set a new rule for libel cases involving public officials: a public official could win a libel suit only if he or she proved that the publisher of the allegedly libelous statement had acted with knowing or reckless disregard for the truth.²⁹

While civil suits aimed at the First Amendment were limited by the Supreme Court in *Sullivan* and its follow-up cases, similar suits aimed at the Second Amendment were limited by the Colorado General Assembly, other state legislatures, and the U.S. Congress, which passed the Protection of Lawful Commerce in Arms Act (“PLCAA”). The circumstances that led to *Sullivan* are like those that led to PLCAA and the state reforms: decades of abusive suits, including litigation designed to coerce submission by driving up defendants’ legal expenses.

Frustrated by legislative rejection of handgun bans, gun control advocates in the 1980s brought product liability suits against handgun manufacturers and retailers.

II. BEFORE LEGISLATIVE REFORMS, TORT LAW WAS OFTEN MISUSED AGAINST THE SECOND AMENDMENT

PRODUCT LIABILITY SUITS IN THE 1980S

American legislatures have always been able to enact gun control laws, provided that such laws comply with the federal and state constitutions. Frustrated by legislative rejection of handgun bans, gun control advocates in the 1980s brought product liability suits against handgun manufacturers and retailers.³⁰ The cases invented many novel theories. For example, guns that were well-suited for self-defense were said to be “defective,” since such guns were also used by criminals. The mere manufacture of a

handgun was alleged to be “ultrahazardous activity”—akin to blasting with dynamite. As one district court judge observed, “the plaintiff’s attorneys simply want to eliminate handguns.”³¹

From the many cases, there was only one verdict for plaintiffs.³² But all cases necessarily created attorney’s fees for the defendants.

NEW AND COORDINATED TORT SUITS IN THE 1990S AND THEREAFTER

Starting in the mid-1990s, suits against firearms businesses were based on even more inventive grounds: negligent marketing (distribution),³³ public nuisance,³⁴ recovery of government medical expenses for crime victims, unfair trade practices, deceptive advertising, and so on. Starting in 1998, a coordinated series of lawsuits were filed by three dozen local governments, and by New York State Attorney General Elliot Spitzer. Further, Secretary of Housing and Urban Development Andrew Cuomo organized federally funded housing authorities to bring additional suits.³⁵

Whatever the merits of suits against arms manufacturers, the suits against the industry associations assailed the freedom of speech. The suits retaliated against trade associations for their often-successful public advocacy.

Bridgeport, Connecticut, mayor Joseph Ganim described his lawsuit as “creating law with litigation.”³⁶ “The Bridgeport suit named 12 American firearms manufacturers, three handgun trade associations, and a dozen southwestern Connecticut gun dealers, and asked for damages in excess of \$100 million.”³⁷

1. Suits against the free speech of trade associations

Bridgeport’s lawsuit was typical in that it sued the firearms trade associations. These trade associations did not manufacture or sell firearms. Instead, the National Shooting Sports Foundation and similar groups were typical trade associations: advocating for their industry, promoting best practices within the industry, and promoting hunting and recreational shooting sports activities.

Whatever the merits of suits against arms manufacturers, the suits against the industry associations assailed the freedom of speech. The suits retaliated against trade associations for their often-successful public advocacy.

2. Structuring and coordination of suits in order to destroy defendants via litigation costs

While coordinated libel multi-suits did not begin until the Alabama cases in the 1960s, the anti-gun lawsuits of the latter 1990s were coordinated from the start. Brought in as many jurisdictions as possible and well-designed to resist consolidation, they were organized to destroy, even if they could never win a verdict. “If twenty cities do bring suits, defending against them, according to some estimates, could cost the gun manufacturers as much as a million dollars a day,” explained a *New Yorker* article.³⁸

Plaintiffs’ attorney John Coale aimed for “critical mass . . . where the costs alone of defending these suits are going to eat up the gun companies” said the *New York Times*.³⁹ As he put it, “the legal fees alone are enough to bankrupt the industry.”⁴⁰ Secretary Cuomo threatened manufacturers with “death by a thousand cuts.”⁴¹

As intended, some manufacturers did go bankrupt, including Sundance Industries, Lorcin Engineering, and Davis Industries.⁴² Davis Industries was “one of the 10 largest makers of handguns.”⁴³

The most venerable manufacturers were driven to the brink. Colt’s Manufacturing Company stopped producing handguns for the public. Facing “28 lawsuits from cities and counties hoping to punish gun makers . . . the company could no longer get loans to finance manufacturing because the lawsuits ‘could be worth zero, or a trillion dollars.’”⁴⁴

Owned by a British conglomerate, Smith & Wesson (“S&W”) was ordered to accept the Cuomo demands, in exchange for immunity from some of the litigation.⁴⁵ “Smith & Wesson made it clear . . . that the company was driven to the agreement by the lawsuits. The settlement would ensure ‘the viability of Smith & Wesson as an ongoing business entity in the face of the crippling cost of litigation,’ the company said in a statement.”⁴⁶

“[T]he litigants vowed to press on until all the manufacturers joined.” Indeed, “to get more aggressive.”⁴⁷ Alex Panelas, mayor of Miami-Dade County, Florida, warned that the S&W deal would be “a floor, not a ceiling’ for any other gun maker that wants to sign on.”⁴⁸

Under the terms accepted by S&W, the company’s practices would be perpetually controlled by a five-member Oversight Commission.⁴⁹ The cities, counties, and states that joined the litigation would select three members, while those that had declined to sue were excluded. The ATF would select one member, leaving gun manufacturers with only one member of their own.⁵⁰ In effect, corporate control would be removed from the stockholders and given to the new gun control committee.

No other company signed the agreement. Glock came closest. As the company was wavering, New York Attorney General Elliot Spitzer warned a Glock executive: “if you do not sign, your bankruptcy lawyers will be knocking at your door.”⁵¹ Spitzer and Connecticut Attorney General Blumenthal announced they would sue other manufacturers for shunning S&W, such as no longer sharing joint legal defense with S&W.⁵² This would have been “the first antitrust action in history aimed at punishing smaller companies for not cooperating with the largest company in the market in an agreement restraining trade.”⁵³ Blumenthal admitted he did not have evidence of illegal behavior; “the point was sheer intimidation,” one observer noted.⁵⁴

Ultimately, the S&W consent decree never went into force. And many lawsuits against the companies continued. Although the cases tended to be dismissed eventually, litigation costs mounted ever higher.⁵⁵

No other company signed the agreement. Glock came closest. As the company was wavering, New York Attorney General Elliot Spitzer warned a Glock executive: “if you do not sign, your bankruptcy lawyers will be knocking at your door.”

TO PROTECT FIRST AND SECOND AMENDMENT RIGHTS, COLORADO, OTHER STATES, AND CONGRESS PASSED REMEDIAL LEGISLATION.

Rep. Cliff Stearns (R-Fla.) decried “the government lawyers and private lawyers conspiring, conspiring to coerce private industry into adopting public policy changes through the threat of abusive litigation. The option? Adopt our proposals or you will go bankrupt.”⁵⁶

According to Protection of Lawful Commerce in Arms Act cosponsor Sen. Max Baucus (D-Mont.), the bill was “intended to protect law-abiding members of the firearms industry” from suits “that are only intended to regulate the industry or harass the industry or put it out of business.”⁵⁷ Sen. Thomas Coburn (R-Okla.) called PLCAA necessary “to put a stop to the unmeritorious litigation that threatens to bankrupt a vital industry in this country.”⁵⁸ The suits were designed “to constrict the right to bear arms and attack the Bill of Rights and attack the Constitution.”⁵⁹

As in the 1960s, plaintiffs in a single state could destroy a constitutional right nationally. By the time PLCAA was enacted in 2005, “33 State legislatures have acted to block similar lawsuits However, it only takes one lawsuit in one State to bankrupt the entire industry, making all those State laws inconsequential. That is why it is essential that we pass Federal legislation,” said Senator Sessions (R-Ala.).⁶⁰

Among the bipartisan legislators who supported PLCAA were cosponsors Colorado Democratic Senator Ken Salazar⁶¹ and Colorado U.S. Democratic Representative John Salazar.⁶²

The attempt to bankrupt the gun industry via litigation had—and still has—national security implications. The Department of Defense “strongly support[ed]” PLCAA, to “safeguard our national security by limiting unnecessary lawsuits against an industry that plays a critical role in meeting the procurement needs of our men and women in uniform.”⁶³

Enacted by a bipartisan majority large enough to overcome an attempted filibuster, PLCAA found that imposing liability for third-party crimes violated the Second Amendment, violated “the rights, privileges, and immunities guaranteed” by the Fourteenth Amendment, and violated the rights of law-abiding firearms companies to engage in business.⁶⁴

PLCAA also expressly protected the legislative branch: “The liability actions . . . attempt to use the judicial branch to circumvent the Legislative branch of government . . . thereby threatening the Separation of Powers doctrine.”⁶⁵

As PLCAA explained, the abusive suits were based on “theories without foundation in hundreds of years of the common law and jurisprudence of the United States.” The suits attacked interstate comity, such as by suing in one state against commerce in another state that had been fully compliant with the laws of where the commerce actually took place.⁶⁶

The attempt to bankrupt the gun industry via litigation had—and still has—national security implications.

PLCAS repudiated making firearms businesses liable “for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.”⁶⁷

The key section of PLCAA forbids lawsuits against firearms businesses or business associations that comply with gun control laws:

A qualified civil liability action may not be brought in Federal or State Court. The term “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.⁶⁸

Colorado in 1986 adopted legislation against the abusive product liability suits. After the next round of suits, based on different but still abusive tort theories, the General Assembly enacted additional legislation against the new suits.⁶⁹

III. NEW STATUTES TO PROMOTE ABUSIVE LAWSUITS

After PLCAA became law, the promoters of abusive lawsuits began arguing that PLCAA could be evaded if a statute authorized such suits. The District of Columbia Court of Appeals rejected this argument.⁷⁰ So did the Ninth Circuit.⁷¹

Nevertheless, former New York City Mayor Bloomberg in 2021 convinced the New York legislature to enact a state statute authorizing lawsuits against firearms businesses for conduct even outside of New York. The new statute provided no notice of what lawful conduct would subject a firearms business to a suit.

Later, similar laws were enacted in a New Jersey, Delaware, and California. A Bloomberg bill has been introduced in Colorado, Senate Bill 23-168.

Part III of this Issue Paper describes Colorado Senate Bill 23-168 in detail, as an exemplar of similar bills in other states.

PREEMPTED BY FEDERAL LAW?

Opponents of the Bloomberg bills say that the bills are preempted by the federal PLCAA statute. That was exactly what a federal district court in New Jersey recently held:

Further, reading A1765 as being applicable to the sale or marketing of the product would directly conflict with the intention of Congress. “In the

Colorado in 1986 adopted legislation against the abusive product liability suits.

construction of statutes, it is the duty of the court to ascertain the clear intention of the legislature.” *U.S. v. Fisk.*, 70 U.S. 445, 447 (1865). Congress’s intent here is clear. The PLCAA’s purpose is to “prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.” 15 U.S.C. § 7901 (b)(1). A1765 does just the opposite. To read A1765 as fitting within the predicate exception would run afoul of the goals of the PLCAA and would, in fact, “gut the PLCAA” as NSSF suggests.

A1765 would subject manufacturers, distributors, dealers, and importers of firearms or ammunition products and their trade associations to civil liability for the harm solely caused by the criminal or unlawful misuse of firearm or ammunition products by others. This is in direct conflict with the PLCAA’s purpose.⁷²

Further, said the court, a preliminary injunction was appropriate because the statute was directly aimed at thwarting the exercise of constitutional rights:

The new Bloomberg laws, including Colorado’s Senate Bill 23-168, are plainly designed to eliminate American firearms businesses through litigation costs.

In addition, the Third Circuit has recognized that “[i]n the absence of legitimate countervailing concerns, the public interest clearly favors the protection of constitutional rights[.]” *Council for Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997). Here, Defendant asserts only broad public safety concerns. The Court is mindful that firearms are inherently dangerous and even more so in the wrong hands, but it is also mindful that the PLCAA embodies Congress’s earnest effort to balance those dangers against the national interest in protecting access to firearms. Under the circumstances, the Court is therefore compelled to find that Defendant fails to show legitimate countervailing concerns and that the public interest favors granting Plaintiff’s motion for a preliminary injunction.⁷³

In contrast, a New York federal court dismissed a challenge to a similar New York State statute.⁷⁴ The case is presently on appeal to the Second Circuit.

In terms of whether these laws are preempted by PLCAA, the best evidence comes from the man who signed the first such law in the nation, in 2021. New York Governor Andrew Cuomo said at the signing ceremony that the new bill would “right the wrong done 16 years” earlier, when Congress enacted PLCAA.⁷⁵

The new Bloomberg laws, including Colorado’s Senate Bill 23-168, are plainly designed to eliminate American firearms businesses through litigation costs.

Mr. Bloomberg, after all, is wealthier than the entire American firearms industry combined. His net worth is over 76 billion dollars.⁷⁶ Before PLCAA was enacted, the combined costs of defending against a few dozen abusive lawsuits were already driving firearms manufacturers out of business. Mr. Bloomberg can easily afford to file lawsuits by the hundreds or thousands. Even if most or all of those lawsuits fail, the litigation costs alone will eliminate the firearms industry. This is particularly so if the victims of

the abusive suits are prevented from recovering attorney's fees when plaintiffs abuse the system.

VAGUENESS

Legitimate gun control statutes provide businesses with fair notice of what is lawful and what is not. In Colorado, as elsewhere, there are many laws prescribing the paperwork and procedures for sales, for inventory controls, what kinds of buyers are prohibited, what sorts of arms may be sold under what procedures, and so on.

Violating specific gun control statutes renders a firearms business vulnerable to a civil suit for any resulting harm. PLCAA did not change the situation.

Firearms are controlled by thousands of statutes, ordinances, and regulations. Firearms are among most regulated common consumer products in the United States. Legislators who believe that there should be more "reasonable controls" can enact legislation to create specific new controls.

Instead of enacting specific reasonable controls, SB23-168 authorizes suits for not having unspecified "reasonable controls."

The bill lists various objectives of "reasonable controls," such as: preventing straw purchases, possession by prohibited persons, possession by people who might harm themselves or others, and firearms theft.⁷⁷

All these are laudable objectives; the thousands of gun control laws attempt to advance those objectives. A firearms business that complies with all the laws has no way of knowing what the gun control/gun prevention lobbies in future lawsuits will deem to be "reasonable controls."

SB23-168 is not a mechanism for creating "reasonable controls." Rather, SB23-168 would turn Colorado courts into a national vehicle for the destruction of the firearm industry—the "death by a thousand cuts" lawsuit abuse program touted by the lawsuit architects.

The bill even authorizes suits against businesses in other states that do not have whatever a plaintiff claims to be "reasonable controls."⁷⁸ A law-abiding business in Pennsylvania would have to guess about what the Colorado Attorney General or other Colorado plaintiff might one day deem to be not "reasonable."

The *New York Times's* petition for certiorari in the *Sullivan* case had explained that civil libel suits were in some ways worse than the Sedition Act of 1798, because liability could be based on vague and amorphous standards.⁷⁹ The anti-gun suits of the turn of the century demonstrated a similar problem. The lawsuits did not claim that the defendants had violated any gun control laws; violation of such laws was and is valid grounds for tort liability. Instead, the gun ban plaintiffs claimed that gun businesses should be held liable for not making and selling firearms in whatever ways the gun control/prevention lobbies disapproved.

SB23-168 is not a mechanism for creating "reasonable controls." Rather, SB23-168 would turn Colorado courts into a national vehicle for the destruction of the firearm industry—the "death by a thousand cuts" lawsuit abuse program touted by the lawsuit architects.

ELIMINATION OF PROXIMATE CAUSE

Normally, a tort plaintiff may only win damages from an alleged tortfeasor if there is “proximate cause” between the defendant’s alleged act and the harm suffered by the plaintiff. As defined by the Colorado Supreme Court, proximate cause “means a cause which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have been sustained.”⁸⁰ “Unlawful conduct that is broken by an independent intervening cause cannot be the proximate cause of injury to another.”⁸¹

SB23-168 repudiates the rule of proximate cause. Instead, a special, inescapable theory of liability is invented. It applies solely to firearms businesses. There is a “presumption” of “proximate cause” “notwithstanding any intervening act by a third party.”⁸²

SB23-168 erases proximate cause. The bill creates a “presumption” that every firearms business is liable. No matter how remote the circumstances.

Suppose a Massachusetts gun manufacturer sells a handgun to a Tennessee wholesaler who sells it to a California retailer. A California consumer buys the handgun, in compliance with all of the state’s very strict laws. Ten years later, the gun is stolen during a burglary, even though the consumer complied with California storage laws. The stolen gun is transacted from one gang to another, and eventually ends up in Colorado. There, it is used in a liquor store robbery.

Normally, the liquor store owner could not sue the Massachusetts manufacturer. The manufacturer complied with all laws. The burglary, the illegal gang-to-gang resales, and the robbery are all “independent intervening causes.” Because there is no proximate cause, the Massachusetts manufacturer is not required to pay for what the robber stole from the cash register.

SB23-168 erases proximate cause. The bill creates a “presumption” that every firearms business is liable. No matter how remote the circumstances.

According to the U.S. Supreme Court, the Second Amendment is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.”⁸³

It would not be constitutional to eradicate the common law of proximate cause just so that people could sue newspapers into bankruptcy. Doing the same to firearms businesses is an equally direct attack on the Constitution.

LETTING ANTI-GUN GROUPS SUE IN THE NAME OF THE STATE OF COLORADO

Suppose that in the example described above, the liquor store owner does not want to sue the Massachusetts handgun manufacturer, Smith & Wesson.

Under SB23-168, the decision of the actual victim does not matter. No matter what the victim wants, “The Attorney General, or the Attorney General’s designee” can bring a suit.⁸⁴

There are no limits on the Attorney General’s “designee.” The “designee” can be a gun prevention organization.

Every time a gun is used in a crime in Colorado, “the Attorney General’s designee” can sue every firearms business remotely related. Even though the businesses rigorously followed all gun control laws.

The “Attorney General’s designee” can sue relentlessly. Even if the “designee” rarely wins, litigation costs will eradicate one business after another.

NO MATTER WHAT, THE FIREARMS BUSINESS MUST PAY

Normally, each side in a legal case pays its own attorney’s fees. Like other states, Colorado law tries to protect people from abusive or frivolous lawsuits. When someone deliberately misuses the courts, the misuser must pay the legal costs of the victim of the misuse.

For example, if a lawyer signs a pleading or motion “for any improper purpose, such as to harass,” the court “shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney’s fee.” Colorado Rule of Civil Procedure 11.

Colorado’s 2000 abuse prevention statute applied that principle to firearms lawsuits. Legitimate suits, such as about a firearm that malfunctioned, would go on as usual. Harassment suits were specifically defined. Plaintiffs who brought harassment cases would have to pay for the injuries inflicted on the victims.

SB23-168 repeals the 2000 protection against harassment suits.

Instead, the bill provides that anyone who sues firearms businesses and win “shall” be awarded “attorney’s fees.” In other words, the firearms business must pay for both sides of the case: its own attorneys who defended the business, and for the other side’s attorney who attacked the business.

What if the firearms business defeats the case brought by lawsuit mill of the Attorney General and his “designee” gun prevention organizations? There will no compensation for the lawsuit abuse victims.

The rule of SB23-168 is: the firearms business always loses.

PROHIBITING YOUNG PEOPLE FROM LEARNING FIREARMS SAFETY

The prohibitionist intent of SB23-168 is also effectuated its ban on all design, sales, or marketing “targeted at minors.” “A firearms industry member shall not manufacture, distribute, import, or offer for wholesale or retail sale a firearm industry product that is: . . . (b) Designed, sold or market in a manner that is targeted at minors.”⁸⁵

As the gun prohibition lobbies well understand, preventing young people from being introduced to the shooting sports will make future generations less interested in protecting Second Amendment rights.

The “Attorney General’s designee” can sue relentlessly. Even if the “designee” rarely wins, litigation costs will eradicate one business after another.

In Colorado, minors are and have always been allowed to lawfully own long guns. In Colorado, a “youth small game hunting license” is available to persons under 18 who pass a hunter safety class. Youth “big game licenses” are available to persons 12 to 17.⁸⁶

Yet SB23-168 the bill would outlaw, for example, selling low-powered .22 caliber rifles to programs that teach firearms safety, hunter safety, and target shooting to young people. These include programs such as those run by the Boy Scouts, 4-H, gun clubs, and by hunting mentors certified by the Colorado Department of Parks and Wildlife.⁸⁷

Some of the above organizations, as well as some manufacturers, such as Winchester, publish booklets teaching children the rules of firearms safety. These booklets help children safely participate in the shooting sports, such as target practice. This “marketing” to children would become illegal under SB23-168.

Some manufacturers make low power (.22 caliber) rifles specifically intended to teach firearms safety to children. For example, the .22 caliber “Chipmunk” has an ammunition capacity of one round; there is no magazine. The stock length and frame are smaller than for standard adult rifles, making the Chipmunk an excellent gun to introduce a supervised child to safe firearms handling.

Banning the safe instruction of young people in firearms safety is a gun prohibition program. It is the opposite of fostering gun safety.

IV. LIKE PRINTING PRESS MANUFACTURERS, ARMS MANUFACTURERS MAY NOT BE CIVILLY LIABLE FOR THIRD-PARTY MISUSE OF THEIR PRODUCTS.

Aggrieved by an advertisement in a newspaper, Montgomery, Alabama, Commissioner L.B. Sullivan did not sue the manufacturer of the printing presses that the *Times* negligently misused to publish an advertiser’s false statements. Allowing lawsuits against press manufacturers for third-party misuse would seriously curtail “the freedom . . . of the press.”⁸⁸

Similar constitutional principles apply to arms manufacturers. As law professor Edward Lee writes, to “the Framing generation, the connection” between presses and arms was “commonsensical. The right to bear arms and the freedom of the press presented the exact same type of question for the Framers: can there ever be a natural right to a man-made device? In the case of arms and presses, the Framers believed so.”⁸⁹

Before the American Revolution, owners of presses and of arms had both been harassed by English governments.⁹⁰ “It is not hard to imagine why the Framers singled out only these two technologies for constitutional protection,” writes Lee. “Madison and his contemporaries spoke about the two rights in the same breath, and often in similar ways describing them separately as private rights, the ‘palladium of liberty,’ and necessary or essential to a ‘free state.’”⁹¹ This is one reason why the First and Second

As the gun prohibition lobbies well understand, preventing young people from being introduced to the shooting sports will make future generations less interested in protecting Second Amendment rights.

Amendments were placed next to each other. Both safeguard natural rights—at least according to the Founders. And also according to the Colorado Constitution.⁹²

Imposing tort liability for third-party misuse would eliminate press manufacturers and arms manufacturers. It has always been known that presses and arms are sometimes misused. In the words of the U.S. Supreme Court, “As Madison said, ‘Some degree of abuse is inseparable from the proper use of every thing.’”⁹³

According to the U.S. Supreme Court, similar principles apply to the First and Second Amendments.⁹⁴ Both the First and Second Amendments secure fundamental rights. Reform statutes against abusive lawsuits protect both Amendments.

V. HOW THE BRADY LOBBY AND THE ARNOLD & PORTER LAW FIRM DECEIVED THE PHILIPS

In 2012, a criminal attacked patrons at an Aurora, Colorado, movie theater. Among the murder victims was Jessica Ghawi, daughter of Sandy and Lonnie Phillips.

The Aurora perpetrator had no prior criminal record. All of his firearms and ammunition purchases complied with the law. The crime might have been prevented if persons who knew about his danger had alerted law enforcement, but they did not.

The perpetrator’s homicidal desires were known to his psychiatrist at the University of Colorado. While psychiatrists must ordinarily maintain patient confidentiality, there is an exception, the Tarasoff Rule, when the patient threatens violence. Pursuant to that rule, the psychiatrist had broken confidentiality and alerted the Threat Assessment Team at CU. However, the danger of the incipient Aurora killer was shared only within the University of Colorado system. After he dropped out of the university, CU lost interest in him, and did not inform law enforcement about the danger.⁹⁵ The perpetrator could have been involuntarily committed for a 72 hour mental observation if a petition had been filed in court.⁹⁶

The abusive lawsuits against firearms businesses, described in Part II of this Issue Paper, were created by a D.C. organization called Handgun Control, Inc. Previously, the organization had supported a Massachusetts ballot initiative to confiscate all handguns.⁹⁷ The group’s head had described to the *New Yorker* a three-step plan to eliminate handguns: first, reduce handgun production and sales; second, get them all registered; third, make possession “totally illegal.”⁹⁸

Since 2001, the group has used a variety of permutations of “Brady,” such as “Brady Center.”

With the help of the Denver office of the international corporate law firm Arnold & Porter, the Brady group convinced the Philips to file an obviously meritless lawsuit against firearms businesses.

This is one reason why the First and Second Amendments were placed next to each other. Both safeguard natural rights—at least according to the Founders. And also according to the Colorado Constitution.

The widely-respected U.S. District Senior Judge Richard P. Matsch granted the defendants' motion to dismiss. His [order](#) described the case as an "all conceivable claims attack on these internet sellers, attempting to destroy their legitimate businesses and invalidate the federal and state statutes protecting them."⁹⁹

Judge Matsch noted the absurdity of what the lawsuit was asking for:

The injunctive relief requested is to stop all the defendants' commercial activities until their business practices have been changed and approved by the court. There is nothing in the record to indicate that the plaintiffs or the Brady Center, the apparent sponsor of this case, made any attempt to persuade the defendants to make any alterations of those practices before bringing this highly publicized lawsuit. It would be highly unlikely that the defendants would seek to emasculate their businesses to conform to an undefined standard of care that would have prevented a purchaser of their products from using them in a barbaric assault on innocent people in an entertainment venue.

The case never had a good-faith hope of legal success. It was just a publicity stunt, Judge Matsch wrote:

It is apparent that this case was filed to pursue the political purposes of the Brady Center and, given the failure to present any cognizable legal claim, bringing these defendants into the Colorado court where the prosecution of James Holmes was proceeding appears to be more of an opportunity to propagandize the public and stigmatize the defendants than to obtain a court order.

To discourage vexatious abuse of the courts, Colorado had enacted a reform statute in 2000 providing for attorney's fees to defendants targeted by lawsuit abuse. Judge Matsch followed the law and made a fee award.

As reported in the *Colorado Sun*, "the Phillipeses say they didn't fully understand the risks when two years after their daughter, Jessica Ghawi, was killed in the 2012 Aurora theater shooting, they sued four businesses patronized by the gunman."¹⁰⁰ The Brady group insists that it fully informed the Philips of the legal risks.¹⁰¹

The law firm that handled the case was the Denver branch of the D.C. megafirm Arnold & Porter. Neither the Philips nor the Brady group have suggested that Arnold & Porter clearly informed the Philips that their suit was almost certain to result in an award of attorney's fees. If Arnold & Porter failed to inform, the failure would be an extreme dereliction of legal duty to clients.

When awarding the attorney's fees, Judge Matsch wrote: "It may be presumed that whatever hardship is imposed on the individual plaintiffs by these awards against them may be ameliorated by the sponsors of this action in their name."

Judge Matsch was wrong. The entities that had abused the legal system did not reimburse the Philips the harms caused by the entities' misconduct. The Brady group

With the help of the Denver office of the international corporate law firm Arnold & Porter, the Brady group convinced the Philips to file an obviously meritless lawsuit against firearms businesses.

said it did not have enough money to help the Philips. The attorney's fees award was \$213,001.86.¹⁰² Brady's most recent report indicates annual revenues of over \$41 million.¹⁰³ According to the group, "Over the past 30 years Brady has won over \$60 million for victims of gun violence."¹⁰⁴

Arnold & Porter's annual revenues are over one billion dollars. Profits per partner are over 1.5 million per partner.¹⁰⁵ If Arnold & Porter had reduced per-partner profits by several hundred dollars for one year, the firm could have paid the attorney's fees award caused by the firm's reckless and irresponsible publicity stunt.

For decades the Brady lobby has been abusing the legal process with meritless suits, trying to use ruinous litigation costs to impose an extremist agenda that has been repeatedly rejected by legislatures.

To stop lawsuit abuses, including the long-running abuses by Brady in particular, the Colorado legislature enacted reform statutes in 1986 and 2000. In a fair system, the perpetrators—and not the victims—of meritless, vexatious lawsuits should pay for the unnecessary costs imposed by the perpetrators.

The strongest evidence against SB23-168 is the Brady website. That website lists the many Brady lawsuits against firearms businesses. As the website shows, some of these cases led to substantial verdicts or settlements in favor of the plaintiffs, including successes achieved after PLCAA was enacted. Thus, PLCAA and similar state laws do not prevent meritorious suits against gun businesses. The reform statutes only prevent the junk lawsuits.

Conspicuously absent from the Brady website's list of cases is the Philips case.¹⁰⁶ A search of the Brady website for "Philips" returns no results. The organization's treatment of the Philips has been poor.

The Philips case was the only Colorado tort case involving guns where attorney's fees were awarded pursuant to the state's reform statute.

Meanwhile, legitimate tort cases continue. For example, currently pending in U.S. District Court in Colorado is a case against Kahr Arms; the plaintiff alleges that a Kahr handgun discharged when the gun was dropped.¹⁰⁷ Lawsuits against manufacturers of firearms that actually are defective have always been proper and lawful, in Colorado and nationally.

There is a word for Brady claiming that it is the victim of harm it inflicted on the Philips, and many other innocent persons, through abuse of the legal process. The word is *chutzpah*.

In a fair system, the perpetrators—and not the victims—of meritless, vexatious lawsuits should pay for the unnecessary costs imposed by the perpetrators.

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- 43 Butterfield, *supra*.
- 44 Mike Allen, *Colt’s to Curtail Sale of Handguns*, N.Y. TIMES, Oct. 11, 1999.

45 *Agreement Between Smith & Wesson and the Departments of the Treasury and Housing and Urban Development, Local Governments and States*, U.S. DEPARTMENT OF HOUSING AND DEVELOPMENT (summary), <https://archives.hud.gov/news/2000/gunagree.html>. See also David Kopel, *Smith and Wesson's Faustian Bargain*, NAT'L REV. ONLINE, Mar. 20 & 21, 2000, <https://www.davekopel.com/NRO/2000/Smith-and-Wesson's-Faustian-Bargain.htm>.

46 Jonathan Wesiman, *Gun maker, U.S. reach agreement*, BALT. SUN, Mar. 18, 2000. It turned out to be a bad bargain for Smith & Wesson. Not even one of the lawsuits against the company was dismissed. Instead, the company was sued in more cases filed the next year.

47 *Id.*

48 *Id.*

49 *Agreement* (paragraph titled "Oversight Commission").

50 Walter Olson, THE RULE OF LAWYERS 125–26 (2003).

51 146 CONG. REC. H2017 (Apr. 11, 2000) (Rep. Stearns).

52 Olson, at 127.

53 *Id.*

54 *Id.* Ironically, Attorney General Blumenthal overlooked an actual illegal antitrust conspiracy that was taking place. Andrew Cuomo and Elliot Spitzer conspired with city governments for the cities to only buy guns for municipal law enforcement agencies from manufacturers that had acquiesced to the "code of conduct" giving city appointees control over the manufacturers. The conspiracy was terminated after an antitrust lawsuit was filed. *National Shooting Sports Foundation et al. v. Cuomo et al.*, No. 00-CV-1063 (N.D. Ga. Sept. 5, 2000). The antitrust violations having ceased, the plaintiffs voluntarily dismissed their case without prejudice.

55 One such case, brought by the government of Gary, Indiana, is still going on a quarter of a century later.

56 146 CONG. REC. H2017 (Apr. 11, 2000).

57 151 CONG. REC. S9087 (July 27, 2005).

58 *Id.* at S9059.

59 *Id.*

60 151 CONG. REC. S9063 (July 27, 2005) (Sen. Sessions, R-Ala.).

61 <https://www.govtrack.us/congress/votes/109-2005/s219> (vote); <https://www.govtrack.us/congress/bills/109/s397/cosponsors> (cosponsors)

62 <https://clerk.house.gov/evs/2005/roll534.xml> (vote); <https://www.congress.gov/bill/109th-congress/house-bill/800/cosponsors> (cosponsor of similar House bill).

63 151 CONG. REC. S9395 (July 29, 2005).

64 15 U.S.C. § 7901(a)(2), (6), (7).

65 15 U.S.C. § 7901(a)(8). See also Glenn Reynolds, *Permissible Negligence and Campaigns to Suppress Rights*, 68 FLA. L. REV. FORUM 51, 57 (2016).

66 15 U.S.C. § 7901(a)(7)–(8).

67 15 U.S.C. § 7901(a)(5).

68 15 U.S.C. § 7903(5)(A)(iii).

69 C.R.S. §§ 13-21-501 to 505.

70 *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008). The court is the highest court for home rule District. It is not the same as the U.S. Court of Appeals for the District of Columbia Circuit.

71 *Ileto v. Glock, Inc.*, 349 F.3d 1191 (9th Cir. 2003).

72 *National Shooting Sports Foundation v. Platkin*, No. 22-6646 (ZNQ)(TJB), 2023 WL 1380388 *7 (D.N.J. Jan. 13, 2023).

73 *Id.* at *9.

74 *National Shooting Sports Foundation, Inc. v. James*, 604 F.Supp.3d 48 (N.D.N.Y. 2022).

75 Gov. Andrew M. Cuomo, *Governor Cuomo Signs First-in-the-Nation Gun Violence Disaster Emergency to Build a Safer New York* at 35:00-38:15, YouTube (July 6, 2021), <https://bit.ly/3UyZoSx>.

76 Forbes magazine estimate, as of Feb. 27, 2023, <https://www.forbes.com/profile/michael-bloomberg/?sh=54deec951417>

77 SB23-168, to create C.R.S. § 6-27-104(4).

78 A lawsuit can be brought if any "firearms industry product" was used in Colorado, "and it was reasonably foreseeable that the product would be used or possessed in the state." SB23-168, to create C.R.S. § 6-27-104(1)(c). Since it is legal for consumers in one state to sell a firearm to someone in another state (by routing the sale through licensed dealers in both states), it is "reasonably foreseeable" that a firearm sold in one state could eventually end up in any other state. It is likewise foreseeable that a firearm sold in one state might one day be stolen from the lawful owner, enter the national black market, and end up in any other state.

79 Hall, at 122–26. PLCAA is not the only federal statute preempting tort suits involving speech. See Health Care Quality Improvement Care Act, 42 U.S.C. §11111–12 (peer review); Labor Management Relations Act, 29 U.S.C. §185 (speech that would require interpretation of the collective bargaining

agreement); Railway Labor Act, 45 U.S.C. §151a (same); Federal Election Commission Act, 52 U.S.C. §30107(c) (“disclosing information at the request of the Commission”). The Fair Credit Reporting Act creates an extensive regulatory scheme and shields compliant businesses from civil liability. 15 U.S.C. §1681. PLCAA does the same for businesses that comply with the vast panoply of gun control laws and regulations.

80 *People v. Stewart*, 55 P.3d 107, 116 (Colo. 2002).

81 *Id.* at 121.

82 SB23-168, to create C.R.S. § 6-27-105(4)(b).

83 *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

84 23-168, to create C.R.S. § 6-27-105(2).

85 SB23-168, to create C.R.S. § 6-27-104(3).

86 Colo. Rev. Stat. § 33-4-117.

87 The state government program is described here: <https://cpw.state.co.us/learn/Pages/OutreachHuntsmaster.aspx>.

88 U.S. Const., amend. I.

89 Edward Lee, *Guns and Speech Technologies: How the Right to Bear Arms Affects Copyright Regulations of Speech Technologies*, 17 WM. & MARY BILL OF RIGHTS J. 1037, 1049–50 (2009).

90 *Id.* at 1058–64.

91 *Id.* at 1070.

92 “All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.” Colo. Const., art. II, § 3.

93 *Sullivan*, 376 U.S. at 271 (citing 4 ELLIOT’S DEBATES ON THE FEDERAL CONSTITUTION 571 (1876)).

94 See, e.g., *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950) (describing the First, Second, Fourth, Fifth, and Sixth Amendments as the “civil-rights Amendments.”); *Konigsberg v. State Bar of California*, 366 U.S. 36, 51 n.10 (1961) (comparing “the commands of the First Amendment” to “the equally unqualified command of the Second Amendment.”); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (“the people’ protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments” are likely the same persons); *United States v. Cruikshank*, 92 U.S. 542, 551–52 (1875) (rights protected by the First and Second Amendments predate the Constitution); *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (the Second Amendment is not “subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause.”).

95 David B. Kopel & Clayton Cramer, *Reforming Mental Health Law to Protect Public Safety and Help the Severely Mentally Ill*, 58 HOWARD LAW JOURNAL 715, 765–69 (2015).

96 Colo. Rev. Stat. § 27-65-106 (2010).

97 Letter from Nelson T. Shields, III, Exec. Dir., Nat’l Council to Control Handguns (1976) (fundraising letter for campaign to support the initiative) (on file with author). Before adopting the name “Handgun Control, Inc.” the group had called itself the National Council to Control Handguns.

98

The first problem is to slow down the increasing number of handguns being produced and sold in this country. The second problem is to get handguns registered. And the final problem is to make the possession of all handguns and all handgun ammunition—except for the military, policemen, licensed security guards, licensed sporting clubs, and licensed gun collectors—totally illegal.

Richard Harris, *A Reporter at Large: Handguns*, NEW YORKER, July 26, 1976, at 58.

99 *Philips v. LuckyGunner*, No. 14-cv-02822-RPM (June 17, 2015).

100 Jesse Paul, *Colorado law makes it very difficult and financially perilous to sue the gun industry. That’s likely to change*, COLO. SUN, Feb. 21, 2023.

101 Stephen Gutowski, *Aurora Victim’s Family Says Gun-Control Group Misled Them on Risks of ‘Meritless’ Lawsuit That Drove Them into Bankruptcy*, THE RELOAD, Feb. 22, 2023, <https://thereload.com/aurora-victims-family-says-gun-control-group-misled-them-on-risks-of-meritless-lawsuit-that-drove-them-into-bankruptcy/>

102 For the three defendants, the amounts were, respectively, \$111,971.10; \$59,060.87; and \$31,969.89. Total was \$213,001.86.

103 “Total revenue \$41,322,000.” Of that, “contributed services” were said to be \$30,000,000. Brady United Against Gun Violence, Annual Report Fiscal Year 2021, at 18, <https://s3.amazonaws.com/brady-static/AR-FY21-v11.pdf> .

104 Brady spokesperson Mike Stankiewicz, quoted in Gutowski, *Aurora Victim’s Family Says Gun-Control Group Misled Them*.

- 105 Law.com, <https://www.law.com/law-firm-profile/?id=162319&name=Arnold-%26-Porter&slreturn=20230127183913>. The firm's full name is Arnold & Porter Kaye Scholer, reflecting the firm's 2016 merger with a New York firm.
- 106 Brady Leading in the Courtroom, <https://www.bradyunited.org/legal-cases>.
- 107 *Heikkila v. Kahr Firearms Group*, No. 1:2020cv02705 (D. Colo., filed Sept. 4, 2020). Docket page: <https://dockets.justia.com/docket/colorado/codce/1:2020cv02705/200610>.

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JON CALDARA is President of the Independence Institute.

DAVID KOPEL is Research Director of the Independence Institute. Some of this Issue Paper is based on Kopel's 2019 Supreme Court amicus brief in *Remington v. Soto*, and other writing.

ADDITIONAL RESOURCES on this subject can be found at: <https://davekopel.org/2dAmendment.htm#Lawsuits>.

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Prepared Testimony of Kimaya Kini
Colorado General Assembly House Judiciary
Support of SB23-170
22 March 2023, 1:30 PM

My name is Kimaya Kini, and I am testifying in support of bill SB23-170 (Senate Bill 170) to expand who can petition for an extreme risk protection order to include licensed medical care providers, licensed mental health-care providers, licensed educators, and district attorneys.

Today, I represent Cherry Creek High School's Students Demand Action and the millions of students who constantly fear, "What if I am next?". What if my community, my school, my life is the next victim of gun violence? Over the past few years, I have seen the world around me crumble into a world where firearms are the leading killer of children and teens, a world where we've become numb to the words of school shootings that fill the news far too often. And I'm done. I am done allowing us to mourn our losses yet never stop the problem at its core. We cannot shed tears over deaths we take no action to prevent. Yet today, we are presented with the opportunity to change this. To give me and all the other students out there a chance to live without wondering - what if I am next?

When life starts to fall apart, the ones who notice are the professionals helping us every day. Not our families, not law enforcement, but doctors, teachers, and counselors. But what happens when a student confides in their teacher that they feel the only way to release their pain

is to inflict it on themselves or others? What happens when a patient reaches out to their therapist or their doctor that they may shoot themselves or others? Do we just ask that they wait for others to handle it? - by the time the wait is up, another may already be dead.

According to the National Institute of Justice, "Nearly half of individuals who engaged in mass shootings (48%) leaked their plans in advance to others, including family members, friends, and colleagues, as well as strangers and law enforcement officers." While law enforcement and family members are included in this, the continuation of shootings despite current measures proves that by expanding the net of who is allowed to petition for extreme risk protection orders, we can increase the chances of preventing another . Allowing other qualified individuals with relations to the shooter to petition allows us to prevent shootings beyond what we are able to prevent right now. The National Institute of Justice also found that "About 70% of individuals who perpetrated mass shooting knew at least some of their victims. In particular, K-12 school and workplace shooters were "insiders" — current or former students and employees" (Public Mass Shootings). If a shooter is most likely to attack people they know, then, aside from family, everyone at risk in those cases is helpless. Specifically in school shootings, if the shooters are usually current or former students, they may have told an educator, who currently can only pass it on to law enforcement. While they wait for the police to see the case and petition, the shooter might have already attacked the school. That is another student. Another death. Another memorial we bring flowers to. Another story we repost on social media. This ends here.

The data, matched with my student perspective, is proof that if we are truly going to end the atrocities of school shootings, among other mass shootings, we must empower the professionals most present in these shooters' lives rather than depending solely on law

enforcement and family who are not always fit to intervene. This bill is empowering and hopeful, especially for students like me who hope that one day, we can stop wondering, what if I am next?

Thank you for your time and consideration of my testimony in support of Senate Bill 170.

Work Cited

“Public Mass Shootings: Database Amasses Details of a Half Century of U.S. Mass Shootings with Firearms, Generating Psychosocial Histories.” *National Institute of Justice*, 3 February 2022,
<https://nij.ojp.gov/topics/articles/public-mass-shootings-database-amasses-details-half-century-us-mass-shootings>. Accessed 21 March 2023.



SB-23-170, SB-23-168, Judicial Committee AOL Mail® to Bo.Pogue@coleg.gov
03/21/2023 08:01 AM

March 21, 2023

Dear Legislators,

I am in support of SB-23-170, the Extreme Risk Protection Order Petition bill. This legislation expands those who can call for risk protection to prevent gun violence to include licensed medical care providers, licensed mental health-care providers, licensed educators, and district attorneys.

I also support SB-23-168, the Gun, Violence Victims' Access to Judicial System legislation. Current law limits product liability actions against manufacturers of firearms and ammunition to situations in which there was a defect in the design or manufacture of a firearm or ammunition. The bill repeals that limitation.

As a retired critical care RN, I took care of more gunshot wounds (GSWs) than I care to remember. Early in my career I worked at Craig Rehabilitation Center and GSWs were the third cause of brain and spinal cord injury. I moved to critical care and took care of the gang bangers while floating to Denver General in the 1980s and early 1990s. I was in Pediatric Advanced Life Support (PALS) training and testing when the Columbine shootings happened. We got 4 of those survivors in my ICU at Swedish Medical Center. I estimate I cared for more than 100 GSWs.

I have also lost 2 great nephews to self-inflicted GSWs. The last one being only 13 years old! My brother and my nephew didn't learn to store their guns locked up and separate from the ammunition, like my Dad taught them with his hunting weapons.

There are more guns than people in the USA. Only 1/3 of us are gun owners. That means one third of the population decides how we live or how we die. That is unacceptable! It is way past time for sensible gun control!

Thank you for your consideration!

Janice Brown
Englewood, CO 80110



HB24-1230 -Prohibit of Assault Weapons in ColoradoGL to Bo.Pogue@coleg.gov
03/17/2023 04:52 PM
Cc "Gmail", "Gmail"

Mr. Pogue:

As a resident of the City and County Denver, I support the continued examination of HB24-130 for strong consideration by the Judicial Committee and referral with modifications, to the general assembly. I am expressing my opinion to staff with the hope of you expressing this to the whole Committee. Certainly, I would think a number of citizens would be contacting committee staff for this purpose.

Thank you,

Gary D Laura
800 N. Peral Street #904
Denver, Colorado 80203
Cell: 720-530-6979

Sent from Mail for Windows



In Support of SB23-170 Extreme Risk Protection Order Petitions Rionda Osman to Rionda Osman 03/17/2023 02:02 PM

TO: House Judiciary Committee Members
Sponsors of SB23-170 Extreme Risk Protection Order Petitions

The Legislative Action Committee of the League of Women Voters of Colorado supports SB23-170 Extreme Risk Protection Order Petitions. Our members see the need for enhanced training for sheriffs and other law enforcement personnel because members of those groups have expressed distrust of the ERPO system. We also call on the Office of Gun Violence Prevention to engage with organizations that conduct parental training so that the mechanisms, limitations, and benefits of ERPOs are well known and more likely to be used.

I urge you to support SB23-170 Extreme Risk Protection Order Petitions.

By expanding the categories of people who can petition for an ERPO to include district attorneys, community members, educators, licensed health care professionals, and mental health professionals, the bill promises to reach more individuals in crisis than is currently possible.

Under an ERPO, guns are removed in a formal process, overseen by the courts. The gun owner can petition for return of guns. This framework should reassure gun owners that procedures are in place to protect their rights as well as to prevent harm.

The relative success of Colorado's existing ERPO law (110 petitions in the first year) is encouraging. There are many instances in which the application of the law could have made a difference. More widespread information campaigns and encouragement could save lives.

The bill also requires the Colorado Department of Public Health and Environment (CDPHE) to spend funds on a public education campaign regarding the availability of, and the process for requesting, an ERPO. The Office of Gun Violence Prevention should be explicitly directed to launch a vigorous campaign to publicize the ERPO law.

References

Barnard, Leslie M., Megan McCarthy, Christopher E. Knoepke, Sabrina Kaplan, James Engeln, and Marian E. Betz, "Colorado's First Year of Extreme Risk Protection Orders," *Injury Epidemiology*, Vol. 8, No. 59, 2021.

Rand Corporation. The Effects of Extreme Risk Protection Orders. Updated January 10, 2023. <https://www.rand.org/research/gun-policy/analysis/extreme-risk-protection-orders.html>

Research- Mass Murders and Spree Killings not Unique to U.S.

02-03-2017

The Crime Prevention Research Center updated their list of mass murders and spree killings world-wide on 01-30-2017. (Some additional recent incidents are included here.)

After the 2015 Charleston Massacre, President Obama referred to such atrocities as a particularly American problem. This does not appear to be the case.

As the mosque attack in Quebec, Canada on 01-29-2017 should remind us, criminal and terrorist violence is not restricted to this country. Nor are these horrible crimes always committed with firearms. (Examples do not include African, or Asian cases.)

One salient fact is that the most dastardly US and foreign crimes are often committed in so-called "gun-free" zones or against soft targets in jurisdictions where the local population has been largely disarmed by the government that was supposed to protect them.

Some examples of foreign mass murders/spree killings:

04-26-2002, Erfurt, Germany. Recent graduate of Gutenberg Gymnasium killed 18 people.

03-11-2009, Winnenden, Germany. Winnenden School shooting left 15 dead.

07-22-2011, Utoya, Norway. Lone gunman killed 67 people and wounded 110 others. Many victims were trapped on an island, where no legal guns were allowed.

01-07-2015, 01-08-2015, Paris, France. Charlie Hebdo and related attacks killed 17, including 2 unarmed French police officers.

11-14-2015 Paris, France. Coordinated gun and suicide bombing attacks. 130 killed. 89 killed in the Bataclan Theatre. ISIS claimed responsibility.

07-14-2016, Nice, France. Tunisian resident of France killed 86 people by driving a hijacked cargo truck into a crowd.

07-22-2016, Munich, Germany. A gunman killed 9 in a shopping mall. A witness shouted at the gunman from a balcony, but could not do more, because he was unarmed.

12-19-2016, Berlin, Germany. A truck attack in a Christmas market killed 12 and injured 56.

01-01-2017, Istanbul, Turkey. Reina nightclub attack killed 39 and wounded 68. ISIS claimed responsibility.

01-29-2017, Quebec City, Canada. A Right-Wing extremist killed 6 and wounded 17 in an attack on a mosque during a prayer service.

<http://crimeresearch.org/2017/01/with-39-killed-in-tunisia-attack-the-top-three-mass-public-shootings-are-outside-the-united-states/>

March 22, 2023

TO: House Judiciary

RE: SB23-168, Gun Violence Victims Access to Judicial System

Ladies and Gentlemen:

This bill is a double slap in the face to all Coloradoans, particularly, law abiding gun owners and victims. Violating your oath by attempting to violate our Constitution makes you the criminals. Good, well-meaning voters put you into office on the assumption that you have the intention of upholding your Oath of Office. Apparently, they were naïve, and this will come back to haunt you. Oath-breakers, like those who will vote for this bill, eventually betray everyone because you think your opinion is greater than the Constitution. You are wrong and our family will fight you, legally, every step of the way.

Your insult to victims of gun violence is unconscionable. How dare you divert their misery to a lawful manufacturer who has no control over how their products are utilized! Where is your action against automobile manufacturers for fatal accidents? Driving a car is a privilege, owning a gun is a Constitutionally protected right.

There is reasonable conversation that can be had about gun violence but this body, and your allies, seem to treat that like a religious objection. Passing this legislation makes you appear to be ineffective problem solvers. Worse, you are using victims to advance your agenda. Ultimately, you will fail, and we will help you get there.

We appreciate the opportunity to share our concerns.

Thomas and Laura Wycaver
Golden, CO

Written Testimony in opposition to: (SB23-170) Extreme Risk Protection Order Petitions
(Handouts attached.)

Thank you, Chair and Committee

My name is Robert Edmiston. I am with the Firearms Coalition of Colorado an all-volunteer NRA- affiliate grassroots organization dedicated to the protection of individual rights and public safety.

I am a former U.S. Army Officer and Vocational Rehabilitation Counselor. I have a Master's Degree in Psychology, Counseling and Guidance.

I am writing in opposition to the bill under consideration. We appreciate the efforts of the sponsors, but we do not believe that our many concerns can be resolved. We have problems with the underlying Extreme Risk Protection Order (ERPO) legislation, as well as the expansion to additional categories of persons who can file a petition to destroy the right to individual armed self-defense recognized by the Second Amendment without meaningful, up-front due process.

We believe this bill will lead to unnecessary confrontations between police and law-abiding gun owners, resulting in danger to both officers and civilians.

(Please see Handout #1 regarding the dangers of red flag bills)

Based on historical evidence that weapons control is selective, often discriminatory, and favors the rich and powerful, we believe this bill is uniquely subject to individual bias, since a single judge, ruling in an ex parte hearing, is likely to be influenced by the relative wealth, power and social standing of the accuser and the absent accused.

(Please see Handout #2 regarding the racist origins of gun control)

We oppose this bill, because we believe it will discourage gun owners from seeking potentially beneficial mental health or medical treatment, if the individual perceives a service provider as an agent of a government that seeks to disarm him or her. Mental health workers, medical personnel, and educators may have a conscious or unconscious bias against gun ownership that causes them to see threats where none exist. Giving educators the power to petition for an ERPO will have a chilling effect on parents' First Amendment rights to express their opinions regarding school curriculum and teachers' actions regarding their children.

In California in 2016, following passage of a Red Flag Law, 86 temporary ERPOs were filed. Only 10 of those orders resulted in longer-term denial of Second Amendment rights. That means 76 innocent gun owners were subjected to the danger of armed police confrontations, had their firearms confiscated, and were probably forced to bear the costs of legal counsel and potential damage to their guns.

Even though Colorado Law provides counsel at a second hearing, the damage to the innocent individual has already been done through the ex parte hearing and the

government invasion of the citizen's home, before any allegations have been subject to cross examination. We believe the bill is a violation of due process and easily subject to abuse by estranged family members, biased educators, biased medical and mental health workers, and/or former significant others.

We urge a "No" vote on this measure.

Thank you.

Robert Edmiston
Volunteer Lobbyist
The Firearms Coalition of Colorado



March 22, 2023
303 E. 17th Avenue
Suite 400
Denver, CO 80203

Mister Chair and members of the House Judiciary Committee,

Thank you for the opportunity to submit testimony in support of SB23-170. One Colorado is in strong support of this legislation.

There are no words or actions that can undo the horror and pain that Coloradans have experienced due to rampant gun violence in our state, but this bill is a step forward to prevent future tragedies and save lives. Every life is worth protecting and we should take every sensible measure possible to ensure that our communities are safe.

After the mass murder at Club Q that ended the lives of five beautiful souls, I spent weeks with the Colorado Springs Community impacted by the shooting. The trauma that this community faced is indescribable. No one should ever be put into a situation like that. We must pass sensible gun reform, so we can feel safe to live as our authentic selves. LGBTQ+ Coloradans cannot continue to live in fear for our lives for simply existing.

The LGBTQ+ community faces violence and discrimination at a higher rate than our cisgender, straight peers. According to the latest hate crime statistics in Colorado, 1 in 4 hate crimes are attributed to gender or gender identity and 1 in 5 are attributed to sexual orientation. As a leader and member of the LGBTQ+ community, I urge you to vote yes on SB23-170 to prevent further violence.

Extreme Risk Protection Orders save lives. By expanding the list of who can petition for an Extreme Risk Protection Order and increasing the state's investment in public education on this procedure, you will save lives. We are counting on you to help keep Coloradans safe. Thank you for your time, and I ask for your support of SB23-170.

Sincerely,

Nadine Bridges (she/her)

A handwritten signature in black ink, appearing to read "Nadine Bridges", with a stylized flourish at the end.

Executive Director
One Colorado

Address

303 E. 17th Avenue
Suite 400
Denver, CO 80203

Contact

303-396-6170
info@one-colorado

Website

one-colorado.org

Social

@onecolorado

March 22, 2023

TO: House Judiciary Committee
RE: SB23-170: Red Flag Expansion

Ladies and Gentlemen:

On the surface, Red Flag laws can seem like a reasonable tool to help someone contemplating misuse of a gun. Unfortunately, it is the opposite of reasonable. These laws and the expansion being considered are allowing others to circumvent our Constitution. This law is even worse than others as it violates not one, but multiple Constitutionally protected rights. You are misusing your privilege of making law to invoke pre-crime action by civilians. Compromising civil liberties and property rights to prevent acts of violence that have yet to occur are policies more suited for dystopian thrillers—and police states—than a free society. Red Flag laws worsen the relationship between police and their communities as evidenced by many law enforcement officials who refuse to carry them out.

One of the sponsors of this bill, Representative Tom Sullivan, has experienced tragedy that most of us can only imagine. As parents and grandparents, we would be motivated for effective change that has a greater track record for success. Unfortunately, Rep. Sullivan's victim hubris has been weaponized against law abiding citizens, our Constitution, and prevents meaningful solutions for this issue. Before passing expansive legislation that infringes on civil liberties, lawmakers should have clear and compelling empirical evidence that red flag laws actually do what they are intended to do.

We are past hoping that you will remember your oath and act accordingly. You have an obligation to honor our Constitution and not waste the people's time with ineffective legislation that violates our rights.

Thank you for allowing us to share our concerns.

Thomas and Laura Wyscaver
Golden, CO



Fw: SB-23-170, SB-23-168, Judicial Committee AOL Mail® to:
committees.lcs.ga@coleg.gov 03/21/2023 08:37 AM

----- Forwarded Message -----

From: AOL Mail® <stargazejb@aol.com>
To: Bo.Pogue@coleg.gov <bo.pogue@coleg.gov>
Sent: Tuesday, March 21, 2023 at 08:01:23 AM MDT
Subject: SB-23-170, SB-23-168, Judicial Committee

March 21, 2023

Dear Legislators,

I am in support of SB-23-170, the Extreme Risk Protection Order Petition bill. This legislation expands those who can call for risk protection to prevent gun violence to include licensed medical care providers, licensed mental health-care providers, licensed educators, and district attorneys.

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As a retired critical care RN, I took care of more gunshot wounds (GSWs) than I care to remember. Early in my career I worked at Craig Rehabilitation Center and GSWs were the third cause of brain and spinal cord injury. I moved to critical care and took care of the gang bangers while floating to Denver General in the 1980s and early 1990s. I was in Pediatric Advanced Life Support (PALS) training and testing when the Columbine shootings happened. We got 4 of those survivors in my ICU at Swedish Medical Center. I estimate I cared for more than 100 GSWs.

I have also lost 2 great nephews to self-inflicted GSWs. The last one being only 13 years old! My brother and my nephew didn't learn to store their guns locked up and separate from the ammunition, like my Dad taught them with his hunting weapons.

There are more guns than people in the USA. Only 1/3 of us are gun owners. That means one third of the population decides how we live or how we die. That is unacceptable! It is way past time for sensible gun control!

Thank you for your consideration!

Janice Brown

Englewood, CO 80110

The Firearms Coalition of Colorado, PO Box 1454, Englewood, CO 80150-1454

The racist origin of gun control laws The Hill

By David Kopel and Joseph Greenlee, opinion contributors - 08/22/17 11:00 AM EDT 1,286

1,978

Guns have historically protected Americans from white supremacists, just as gun control has historically protected white supremacists from the Americans they terrorize.

One month after the Confederate surrender in 1865, Frederick Douglass urged federal action to stop state and local infringement of the right to arms. Until this was accomplished, Douglass argued, “the work of the abolitionists is not finished.”

Indeed, it was not. As the Special Report of the Paris Anti-Slavery Conference of 1867 found, freedmen in some southern states “were forbidden to own or bear firearms, and thus were rendered defenseless against assault.” Thus, white supremacists could continue to control freedmen through threat of violence.

Congress demolished these racist laws. The Freedmen’s Bureau Bill of 1865, Civil Rights Act of 1866, and Civil Rights Act of 1870 each guaranteed all persons equal rights of self-defense. Most importantly, the 14th Amendment, ratified in 1868, made the Second Amendment applicable to the states.

Kansas Senator Samuel Pomeroy extolled the three “indispensable” “safeguards of liberty under our form of government,” the sanctity of the home, the right to vote, and “the right to bear arms.” So “if the cabin door of the freedman is broken open and the intruder enter...then should a well-loaded musket be in the hand of the occupant to send the polluted wretch to another world.”

Because of the 14th Amendment, gun control laws now had to be racially neutral. But states quickly learned to draft neutrally-worded laws for discriminatory application. Tennessee and Arkansas prohibited handguns that freedmen could afford, while allowing expensive “Army & Navy” handguns, which ex-Confederate officers already owned.

The South Carolina law against concealed carry put blacks in chain gangs, but whites only paid a small fine, if anything. In the early 20th century, such laws began to spread beyond the ex-Confederacy. An Ohio Supreme Court Justice acknowledged that such statutes reflected “a decisive purpose to entirely disarm the Negro.”

When lynching increased in the 1880s, the vice-president of the National Colored Press Association, John R. Mitchell, Jr., encouraged blacks to buy Winchesters to protect their families from “the two-legged animals ... growling around your home in the dead of night.”

Ida B. Wells, the leading journalist opposing lynching, agreed. In the nationally-circulated pamphlet Southern Horrors, Wells documented cases in Kentucky and Florida, “where the men armed themselves” and fended off lynch mobs. “The lesson this teaches,” Wells wrote, “is that a Winchester rifle should have a place of honor in every black home, and it should be used for that protection which the law refuses to give.”

After the thwarted lynching in Florida, the state legislature enacted a law requiring a license to possess “a pistol, Winchester rifle or other repeating rifle.” A Florida Supreme Court Justice later explained: “the

The Firearms Coalition of Colorado, PO Box 1454, Englewood, CO 80150-1454

Act was passed for the purpose of disarming the negro laborers” and “was never intended to apply to the white population and in practice has never been so applied.”

While lynching began to decline in the early twentieth century, race riots increased. According to historian John Dittmer, blacks fought “back successfully when the mobs invaded their neighborhoods” during the Atlanta riots in 1906. When police stood idle as 23 blacks were killed during riots resulting from a black man swimming into “white” water near Chicago, blacks used rifles to kill 15 attackers.

During the Tulsa Race Riot in 1921, whites (with government approval) burned down a square mile of the prosperous district nicknamed “Black Wall Street,” killing 200 blacks. There would have been more devastation had blacks not fought back, killing 50 of their attackers.

Firearms made possible the Civil Rights Movement of the 1950s and 1960s. Charles Cobb’s excellent book, “This Nonviolent Stuff’ll Get You Killed: How Guns Made the Civil Rights Movement Possible” describes how pacifist community organizers from the North learned to accept the armed protection of their black, rural communities.

The Deacons for Defense and Justice was an armed community defense organization, founded in 1965. With .38 Special revolvers and M1 carbines, they deterred terrorism in the “Klan country” region of Louisiana and Mississippi. When Dr. King led the “Meredith March against Fear” for voter registration in Mississippi, the Deacons provided armed security.

Condoleezza Rice became a self-described “Second Amendment absolutist,” because of her experiences growing up in Birmingham. She recalled the bombings in the summer of 1963, when her father helped guard the streets at night. Had the civil rights workers’ guns been registered, she argued, they could have been confiscated, rendering the community defenseless.

Similarly, when the Klan targeted North Carolina’s Lumbee Indians in 1958 because of their “race mixing,” the Lumbee drove off the Klan in an armed confrontation, the Battle of Hayes Pond. Klan operations ceased in the region.

Justice Clarence Thomas’s opinion in the 2010 McDonald v. Chicago explicated the history of gun control as race control. Historically, people of color in the United States have often had to depend on themselves for protection. Sometimes the reason is not overt hostility by the government, but instead the incapability of government to secure public safety, as in Chicago today.

Self-defense is an inherent human right. The 14th Amendment is America’s promise that no law-abiding person will be deprived of that right, regardless of color.

David Kopel (@DaveKopel) is research director for the Independence Institute, a free market tank in Denver, Colorado. Joseph Greenlee (@Joseph_Greenlee) is an attorney in Steamboat Springs, Colorado.

The views expressed by contributors are their own and are not the views of The Hill.

Tags Joseph Greenlee David Kopel Second Amendment civil rights Birmingham Condoleezza Rice Lynching in the United States Ku Klux Klan Anti-black racism in the United States Far-left politics in the United States

Why Red Flag Bills are Dangerous to Honest Citizens

We believe Red Flag Bills have a disastrous effect on the relationship between law-abiding gun owners and honest law enforcement officers, who those gun owners have traditionally supported. Faced with the prospect of a hostile confrontation with heavily armed officers intent on disarming them, essentially at gunpoint, on the basis of a possibly groundless accusation; law abiding gun owners will have little choice, but to treat law enforcement officers with suspicion and dread, knowing that any contact by officers with citizens could be preludes to life-threatening situations.

Officers ordered to serve Extreme Risk Protection Order (ERPO) have no choice but to treat the subjects of the orders with the presumption that they are actually threats. Officers, already somewhat estranged from civilians by their natural need for defensive awareness and made more wary by recent attacks on law enforcement, sometimes called the “War on Cops,” are going to be hyper-vigilant. This situation has resulted and will result in the unnecessary deaths of civilians, as well as officers. Below are four examples, where police/civilian confrontations ended in tragedy. We believe Red Flag Bills will create more unfortunate violence by causing more unnecessary hostile encounters.

In December of 2004, Frank Lobato was shot and killed by Denver Police. Mr. Lobato was sitting in bed with a can of soda pop, when police entered his room on a domestic violence call. Mr. Lobato was not the suspect in the case, but the responding officer mistook the soda can for a gun and killed him. (1)

In July of 2018, Richard “Gary” Black, decorated Vietnam War veteran and former Internal Revenue agent, was shot in Aurora by police responding to his home following a break-in by a group of people, including a naked man, who assaulted his grandson and tried to drown the boy in the bathtub. Mr. Black, who was forced to shoot the naked intruder, was armed when the police arrived and killed him. (2)

In November of 2018, Gary Willis of Arundel County, Maryland was shot and killed by police at his residence in a pre-dawn raid as they served an ERPO. The niece of the slain individual stated that her uncle “wasn’t a danger to anyone and questioned the police response. She said it (the ERPO filing) was just ‘family being family.’” (3)

Also in November of 2018, at a bar in a Chicago suburb, police shot and killed a security guard, who had just subdued an active shooter in the bar. Jemel Roberson, the slain guard, reportedly had plans to become a law enforcement officer. (4)

1. <http://articles.latimes.com/2004/dec/11/nation/na-denver11>.
2. <https://www.denverpost.com/2018/07/31/aurora-police-shooting-victim-identified/>.
3. <https://www.ammoland.com/2018/11/maryland-red-flag-gun-confiscation-order-ends-with-dead-gun-owner/#axzz5fzvUNoEA>.
4. <https://fox8.com/2018/11/13/suburban-chicago-security-guard-was-killed-by-police-while-doing-his-job-lawyer-says/>.

See article by David Kopel: <https://pagetwo.completenesscolorado.com/2019/03/12/kopel-red-flag-bill-guts-due-process-unnecessarily-threatens-police-and-public-safety/>.

Written testimony on SB23-168, to eliminate firearms businesses via abusive lawsuits

Colorado House of Representatives
Judiciary Committee
State Capitol
Denver, Colorado
Mar. 22, 2023

Testimony of David B. Kopel
727 East 16th Ave.
Denver, Colo. 80203
303-279-6536

This testimony has two parts. Part I details the Colorado 1986 and 2000 statutes enacted to prevent abusive lawsuits that targeted firearms business for making and selling properly-functioning firearms in full compliance with all gun control laws.

Part I also describes a similar federal statute, the Protection of Lawful Commerce in Arms Act (PLCAA), enacted in 2005. None of the laws forbid lawsuits for firearms that are genuinely defective, such as a firearm that discharges when it is dropped. The testimony explains what sorts of lawsuits can and cannot be brought under the Colorado federal laws.

Part II explains how SB23-168, if adopted, would make it simple for states that prohibit abortion, such as Wyoming or Oklahoma, to eliminate abortion services in Colorado. SB23-168 departs from the common law of torts and creates a uniquely punitive system of liability solely for firearms businesses. It allows suits based on conduct that did not occur in Colorado and eliminates the normal tort rule of proximate cause. Further, The bill allows lawsuits to be brought by the Colorado Attorney General or designees of the Attorney General—such as a gun prevention organizations. States with abortion bans could easily copy the SB23-169, change “firearms industry” to “abortion industry,” and use their analogue legislation to eliminate abortion services in Colorado.

Part I. Colorado Law

I.A. Limitation on Product Liability Suits

In 1986, the General Assembly enacted, C.R.S. § 13-21-501. It provides:

The general assembly hereby declares that it shall be the policy in this state that product liability for injury, damage, or death caused by the discharge of a firearm or ammunition shall be based only upon an actual defect in the design or manufacture of such firearm or ammunition and not upon the inherent potential of a firearm or ammunition to cause injury, damage, or death when discharged.

This section forbids some product liability suits. Product liability is one type of tort claim. Unlike many other torts, product liability does not require the plaintiff to prove that the manufacturer or seller of a product acted with any improper state or mind, such as negligence or intentional wrongdoing. While restricting some product liability suits, the Colorado statute allows cases based “upon an actual defect in the design or manufacture of such firearm or ammunition.”

Section 501 is supplemented by:

Section 502, with a standard definition of “product liability action.”

Section 503, reiterating that product liability cases may not be brought based on the fact that a firearm, by its nature, has the “potential to cause injury, damage, or death when discharged.” In a design defect case, the plaintiff must prove “that the actual design was defective.” For example, that the gun’s hammer could drop forward (which makes the ammunition fire) when the trigger is not pressed.

In a manufacturing defect case, the plaintiff must prove that the firearm “was manufactured at variance from its design.” For example, the firing chamber was designed to have a particular strength, to contain the gunpowder explosion, but the particular gun was made with inferior materials that did not contain the explosion.

Section 504 provides specifics for proximate cause as applied to firearms. As explained by the Colorado Supreme Court, proximate cause “means a cause which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have been sustained.” *People v. Stewart*, 55 P.3d 107, 121 (Colo. 2002). For example, an automobile manufacturer knows that when it puts millions of cars into the stream of commerce, some of the cars will be used in intentional crimes (such as running someone over), some of the cars will be used in reckless or negligent crimes (such as accidents caused by drunk driving), and some of the cars will be used in accidents (such as driver hitting a tree because the driver

is focused on changing the channel on the car radio). From the manufacturer's point of view, all the above events are foreseeable.

Under section 504, "the manufacturer's, importer's, or distributor's placement of the product in the stream of commerce shall not be conduct deemed sufficient to constitute proximate cause."

Further, persons using a firearm to perpetrate a crime cannot sue a manufacturer or retailer of the firearm. *E.g.*, "If Beretta has not manufactured a concealable handgun, I would not have tried to rob the liquor store, and if I hadn't tried to rob the liquor store, the police officer wouldn't have shot me."

Section 505 affirms that product liability suits *may* be brought if the firearm "did not function in the manner reasonably expected by the ordinary consumer of such product."

Examples of suits that are allowed:

- When the firearm was dropped, the gun discharged.
- When the user pressed the trigger, the bullet stuck in the firing chamber, and the gun exploded, injuring the user.

Examples of suits that are not allowed:

- The manufacturer chose to make and the retailer chose to sell a small handgun. Because small guns are easy to conceal, criminals often use them.
- The manufacturer chose to make and the retailer chose to sell a handgun that was well-suited for defense of self and others. The very same features that make a handgun usable for defense also make it usable for criminal offense.
- The gun did not contain a design feature that gun prevention lobbies like, but most consumers do not want. For example, if a gun has a magazine disconnect, the gun cannot be fired if there is no magazine inserted in the gun, even though the gun has a round in the firing chamber. A magazine disconnect can prevent accidents caused by reckless people who, seeing that there is no magazine, point the gun at someone and press the trigger. The magazine disconnect can also prevent self-defense. For example, if a person under attack drops the magazine, or the magazine does not seat properly in the gun, the defender can still fire a shot.

II.B. Limitation on other tort suits

In 2000, the general assembly added a section (2) to C.R.S. 13-21-501. It provides:

(2) The general assembly further finds that it shall be the policy of this state that a civil action in tort for any remedy arising from physical or emotional injury, physical damage, or death caused by the discharge of a firearm or ammunition shall be based only upon an actual defect in the design or manufacture of such firearm or ammunition or upon the commission of a violation of a state or federal statute or regulation and not upon any other theory of liability. The general assembly also finds that under no theory shall a firearms or an ammunition manufacturer, importer, or dealer be held liable for the actions of another person.

Section (2) expands the protection against abusive lawsuits to other torts. It further provides that one person cannot be held liable for the actions of another person. For example, if a firearm store illegally sold guns, the store can be sued, but not the manufacturer.

A new section 504.5 reiterates and clarifies the above rules:

(1) A person or other public or private entity may not bring an action in tort, other than a product liability action, against a firearms or ammunition manufacturer, importer, or dealer for any remedy arising from physical or emotional injury, physical damage, or death caused by the discharge of a firearm or ammunition.

(2) In no type of action shall a firearms or ammunition manufacturer, importer, or dealer be held liable as a third party for the actions of another person.

(3) The court, upon the filing of a motion to dismiss pursuant to rule 12(b) of the Colorado rules of civil procedure, shall dismiss any action brought against a firearms or ammunition manufacturer, importer, or dealer that the court determines is prohibited under subsection (1) or (2) of this section. Upon dismissal pursuant to this subsection (3), the court shall award reasonable attorney fees, in addition to costs, to each defendant named in the action.

(4) Notwithstanding the provisions of subsection (1) of this section, **a firearms or ammunition manufacturer, importer, or dealer may be sued in tort for any damages proximately caused by an act of the manufacturer, importer, or dealer in violation of a state or federal statute or regulation.** In any action brought pursuant to the provisions of this subsection (4), the plaintiff shall have the burden of proving by clear and convincing evidence that the defendant violated the state or federal statute or regulation.

Examples of suits that are allowed under the 2000 reforms:

- The firearms manufacturer delivered to a retailer, and the retailer sold in Colorado, a type of firearm that is not allowed by Colorado or federal law.
- The firearms retailer did not comply with Colorado or federal law, such as required paperwork and record-keeping, or background checks.
- The firearms dealer, even when complying with paperwork and background checks, transferred a firearm to a person who the dealer knew or reasonably should have known was prohibited by state or federal law. For example, in some straw purchases, one person in the store is the person and picks out the gun, but then a second person comes forward to fill out the paperwork and submit to the background check.
- The firearms dealer delivered a firearm to a person who was obviously intoxicated, since Colorado law forbids carrying a firearm while intoxicated. C.R.S. § 18-12-106.

Examples of suits that are not allowed under the 2000 reforms:

- Selling too many firearms, or firearms that are concealable, or are well-suited for defense, is a public nuisance.
- Government suits for the costs of providing medical care to victims of gun crimes.
- The retailer or manufacturer should have made or sold the firearm in accordance with procedures favored by gun prevention lobbies, but which have not been enacted as law by Congress or the General Assembly.
- Any suit against a retailer or manufacturer who scrupulously complied with all the laws.

I.C. The federal Protection of Lawful Commerce in Arms Act

In 2005, Congress enacted the Protection of Lawful Commerce in Arms Act (PLCAA). 15 U.S.C. § 7901 et seq. PLCAA forbids bringing a “qualified civil action” “in any Federal or State court.” § 7902(a). “Qualified civil action” means an action against licensed manufacturers of firearms or ammunition or persons “engaged in the business” of selling firearms or ammunition (that is, retail sellers). A “qualified product” is firearms, ammunition, or components. § 7903(1), (2), (4).

PLCAA forbids “a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.” *Id.* at (5)(A).

PLCAA has the following exceptions, allowing for suits against gun makers or sellers:

(i) an action brought against a transferor convicted under section 924(h) of Title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted; [giving a firearm to someone “knowing or having reasonable cause to believe” will be used in a crime.]

(ii) an action brought against a seller for negligent entrustment or negligence per se; [*E.g.*, giving a firearm to someone who is actually intoxicated.]

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including--

- (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
- (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of Title 18; [*e.g.*, failure to comply with record keeping, transfer to a prohibited person].

(iv) an action for breach of contract or warranty in connection with the purchase of the product; [Colorado law is only for torts, not for breach of contract or warranty; warranty is a type of contract].

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of Title 18 or chapter 53 of Title 26. [The main federal gun laws, namely the Gun Control Act and the National Firearms Act.]

How PLCAA and Colorado law are the same:

They allow and prohibit the same types of lawsuits against manufacturers and retailers. If there are any differences in the types of cases allowed, they are very subtle, and have not been identified by the proponents of SB32-168.

How PLCAA and Colorado law differ:

1. PLCAA specifically mentions “components” and Colorado law does not.
2. Only PLCAA forbids lawsuits against “a trade association.” As a practical matter, this means primarily the National Shooting Sports Foundation (NSSF), which is the trade association for firearms businesses. In the late 1990s and early 20th century, many of the abusive lawsuits against firearms businesses also named NSSF as a defendant, in retaliation for NSSF’s successful public advocacy and lobbying on behalf of its members. The suits against NSSF never had any possibility winning a verdict, since NSSF’s activities are protected by the First Amendment. The suits against NSSF were harassment, for purpose of inflicting litigation costs.
3. PLCAA does not change the normal system for the awards of attorney’s fees to a successful plaintiff or defendant. In general, courts may award “costs” to a successful party. Costs include out-of-pocket expenses such as filing fees in courts, or an expert’s hourly fee for time spent being deposed by the other party. “Costs” do not include attorney’s fees.

Under Federal Rule of Civil Procedure 11 and Colorado Rule of Civil Procedure 11, attorney’s fees can be awarded in situations of egregious misconduct. For example, if one side knowingly filed a falsified affidavit, the other side may recoup attorney’s fees for time spent responding to the affidavit.

Attorney’s fees may also be awarded against a plaintiff who brings a “frivolous” case. A frivolous case does *not* include a case asking in good faith for a change in the common law. For example, under the ordinary common law, the City of Denver win a case against Smith & Wesson for the costs of medical treatment of indigent victims of crime who were injured by criminals who used S&W guns. But the City of Denver could, in good faith, ask the courts to change the common law as applied to firearms, so the suit by Denver would not be “frivolous” under the meaning of Rule 11.

In Colorado, if the plaintiff has a firearms case that is or plausibly might be allowed under Colorado law, then the case can move forward in the ordinary way. The winner at trial will be the party with the stronger evidence. In such a case, the ordinary rules about costs and attorney's fees apply.

On the other hand, suppose that the case is obviously in violation of Colorado law, so the defendant files a motion to dismiss. In evaluating a motion to dismiss, the judge must assume that all of the facts alleged by plaintiff in the complaint are true. Fed. R. Civ. Pro. 12(b), Colo. R. Civ. Pro. 12(b). While assuming that the facts are exactly as the plaintiffs claim them to be, a judge must dismiss a case if the plaintiffs have failed to state a legal claim upon which relief will be granted.

In Colorado, if a plaintiff brings a case that is dismissed under Rule 12(b), then the defendants "shall" be awarded attorney's fees. This means that the plaintiffs did not bring a good-faith legal claim. Even if all their alleged facts were true, their case was plainly forbidden by Colorado law.

The Colorado law about attorney's fees in firearms cases was necessary because the lawyers for gun prevention lobbies at the time publicly stated their intention to bankrupt the firearms industry through litigation costs, even if the lawyers could never win a case in court. See David B. Kopel, [*Protecting Law-abiding Firearms Businesses from Abusive Lawsuits*](#), Independence Institute Issue Paper No. 1-2023, pp. 6-7 (collecting quotes).

II. SB23-168 provides the model for other states to eliminate abortion providers in Colorado

SB23-168 repeals the above Colorado protections against abusive lawsuits. Those protections were enacted in response to decades of malicious lawsuits by gun prevention lobbies. Those lawsuits were contrary to the common law of torts, and were intended to destroy firearms businesses through sheer litigation costs.

But SB23-168 does more than repeal protections against misuse of the courts. Even if there were no specific Colorado or federal protections, the types of lawsuits brought by gun prevention lobbies would have little chance of winning a verdict for the plaintiffs, because the tort theories on which the lawsuits are based are so wildly beyond the ordinary common law. It's true that the lawsuits might be able to drive some businesses out of business through the sheer cost of litigation. That was what was happening nationally, before reforms were enacted. Kopel, *supra*, p. 7. But at least the gun prevention lobbies would not be able to win judgements in court.

SB23-168 would change the situation by creating specially liability rules applicable only to the firearms industry. These include:

- Eliminating the defense of compliance with all specific gun control laws.
- Eliminating the principle of proximate cause.
- Allowing lawsuits for conduct in another state that was in full compliance with the laws of the other state.
- Allowing lawsuits for all design, sales, or marketing “targeted at minors.” Even though it is and always has been lawful for minors to use firearms, sometimes subject to restrictions not applicable to adults.
- Allowing lawsuits even when the actual victim of gun misuse does not want to sue, but the Colorado Attorney General does.
- Allowing the Attorney General to delegate lawsuit power to a third party, which is to say, one or more gun prevention lobbies.
- Allowing lawsuits against for firearms stores or businesses that do not have alleged “reasonable controls,” even though SB23-168 does not specific any actual reasonable control.
- A court “shall” award costs and attorney’s fees to any winning plaintiff.
- A court “shall” award punitive damages.

Now imagine that another state, where abortion is illegal, such as Oklahoma or Wyoming, copies SB23-168, and changes the words “firearms industry” to “abortion industry.” A state statute declares than an unborn child is a person, is a resident of the state, and is protected by state laws against homicide.

A pregnant women in Wyoming or Oklahoma travels to Colorado for a surgical abortion. The Attorney General of Wyoming or Oklahoma can bring a wrongful death lawsuit in Wyoming or Oklahoma against the Colorado clinic that performed the abortion.

The same case could be brought against a Colorado company, Just The Pill, that presently uses an unmarked van to sell abortion pills to customers from out of state. Leigh Paterson, [*How one unmarked van is quietly delivering abortion pills on Colorado’s border*](#), KUNC radio (NPR), Oct 27, 2022.

Further, lawsuits could also be brought against the manufacturers of abortion pills or of tools for surgical abortions. The lawsuits would allege that the manufacturers did not have “reasonable controls.” For example, the manufacturers sold to clinics without checking if the clinics had controls to prevent the products from being used for women from states where abortion is illegal.

The anti-abortion lawsuits can go further. Abortion pills are illegal in Wyoming. A pregnant woman in Wyoming asks a Colorado friend to buy some abortion pills in Colorado. Then the Colorado woman gives the abortion pills to the Wyoming woman. The Wyoming woman has committed a Wyoming crime. Can the Wyoming Attorney General manufacturer sue the manufacturer of the abortion pills, even

though the manufacturer complied with Colorado law? Certainly yes, under the principles of SB23-168.

The Wyoming Attorney General's lawsuit would allege that the manufacturer did not have "reasonable controls" on the sale of its pills. According to the Attorney General, the manufacturer, the Colorado pharmacy, or the mail-order pill business selling to Colorado residents did not have "reasonable controls" to prevent "diversion" of pills to Wyoming. The lawsuit could argue that "reasonable controls" mean that abortion pills should only be sold in-person, to prevent a buyer some using someone else's drivers license as identification. Abortion pill manufacturers should only sell to in-person pharmacies.

A pharmacy should only sell to a customer if the pharmacy administers an on-the-spot pregnancy test, in which a pharmacy employee directly observes the women urinating on the test stick. This could be said to be a "reasonable control," because some doctors might write a prescription for a Colorado woman to help the woman help her friend in Wyoming. Or the Colorado woman might really be pregnant, but she wants to obtain abortion pills for her Wyoming friend. So a "reasonable control" would be for the Colorado woman to be required to take the first pill at the pharmacy. Then the Colorado woman must come back to pharmacy to ingest the second and third pills there.

As the Wyoming Attorney General could argue, three trips to a pharmacy for an abortion is eminently reasonable. In Colorado, under the soon-to-be enacted firearms waiting period law, if you go out of town for a one-week vacation and want to leave your guns with a neighbor so they don't get stolen, you and the neighbor will need to make four separate trips to a gun store, and spend six total days of waiting for the transfer and return of the firearms. See David B. Kopel, [*Written testimony on HB23-1219, to delay the acquisition of firearms*](#), Colo. House of Reps., State Affairs Committee. Mar. 6, 2023, pp. 13-14.

The size of verdicts in wrongful death cases varies. Awards in the millions of dollars are not uncommon, and punitive damages can take them much higher. Under SB23-168, punitive damages "shall" be awarded.

If a court in Wyoming or Oklahoma enters a multi-million dollar judgement against abortion providers and abortion tool/pill manufacturers, could a Colorado court (or a court in the manufacturer's state) refuse to enforce the judgement? The answer is no.

The U.S. Constitution, article IV, section 1, provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

A court in state A has does not power to refuse to enforce a court judgement from state B.¹ Specifically, state B cannot refuse to enforce a state A judgement that contravenes the public policy in state B. A foundational case is the U.S. Supreme Court's *Fauntleroy v. Lum*. In that case, Mississippi had a strong public policy against gambling, so Mississippi courts were forbidden by state law to enforce gambling debts. But the U.S. Supreme Court held that Mississippi must enforce the gambling debt that a resident had incurred while in Missouri. 210 U.S. 230 (1908).

In Colorado, the abortion industry is cherished by the majority in the state legislature. In many other states, including Wyoming and Oklahoma, the firearms industry is cherished.

SB23-168 is an act of interstate aggression, written to make Colorado a center for the destruction of the firearms industry nationwide. Supporters of SB23-168 should not be surprised if at least one other state copies SB23-168 and begins using it to destroy the abortion industry in Colorado and nationwide.

The SB23-168 approach would also be easy to apply to other controversial matters, such as transgender treatments in Colorado for children who reside in other states.

¹ The Full Faith and Credit Clause does not apply to judgements that are not final, judgements that were not on the merits, judgements that were obtained by fraud, or judgements where the out-of-state court lacked jurisdiction. There also limits on a state A court deciding the title of real property in state B.